THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1997 CUMULATIVE SUPPLEMENT

Volume 18

Chapters 130 through 136

Prepared under the supervision of

The Department of Justice
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BY

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Annotated through 486 S.E.2d 626. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Cumulative Supplement to Volume 18 contains the general laws of a permanent nature enacted by the General Assembly through the 1997 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purpose of notes only. An index to all statutes codified herein will appear in Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to Michie, Law Publishers, Charlottesville, Virginia.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1997 Regular Session affecting Chapters 130 through 136 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 344, p. 732.
North Carolina Court of Appeals Reports through Volume 123, p. 790.
South Eastern Reporter 2nd Series through Volume 486, p. 626.
Federal Reporter 3rd Series through Volume 116, p. 875.
Federal Supplement through Volume 965, p. 1486.
Federal Rules Decisions through Volume 172, p. 600.
Bankruptcy Reports through Volume 209, p. 549.
Supreme Court Reporter through Volume 117, p. 1864.
North Carolina Law Review through Volume 75, p. 1088.
Wake Forest Law Review through Volume 32, p. 217.
Campbell Law Review through Volume 18, p. 201.
Duke Law Journal through Volume 45, p. 1088.
North Carolina Central Law Journal through Volume 25, p. 100.
Opinions of the Attorney General.

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VOLUME 18

Chapter 130A.

Editor's Note. — The legislation and annotations affecting Chapter 130A have been included in a recently published replacement chapter.

Chapter 130B.

Hazardous Waste Management Commission.

Sec.
130B-2. Definitions.
130B-5. Powers and duties of the Governor.
130B-7. Powers and duties of the Commission.

Sec.
130B-16. Fees.
130B-22. Inter-Agency Committee on Hazardous Waste.

§ 130B-2. Definitions.

(a) Unless a different meaning is required by the context, the definitions set out in G.S. 130A-290 shall apply throughout this Chapter.

(b) Unless a different meaning is required by the context, the following definitions shall apply throughout this Chapter:

(1) "Authorized hazardous waste facility" means a hazardous waste facility authorized by the Governor as provided in G.S. 130B-5(a) and G.S. 130B-5(b)(1).

(2) Repealed by Session Laws 1993, c. 501, s. 16, effective July 23, 1993.

(3) "Commission" means the North Carolina Hazardous Waste Management Commission established pursuant to this Chapter or any successor thereto.

(4) "Department" means the Department of Environment and Natural Resources. (1989, c. 168, s. 1; c. 727, s. 219(35); 1993, c. 501, s. 16; 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 130B-5. Powers and duties of the Governor.

(a) No hazardous waste facility shall be established pursuant to this Chapter unless the Governor determines that such facility is essential and is in the best interests of the State. Such determination shall be based on a periodic review of current and projected hazardous waste generation from all sources within the State, the current and projected effect of efforts to minimize and reduce the generation of hazardous waste, the potential for further reductions in the generation of hazardous waste, current and projected availability and adequacy of facilities for the management of hazardous waste within and outside the State, whether and to what extent private enterprise will provide needed hazardous waste facilities, capacity assurance requirements under CERCLA/SARA, the extent to which agreements can be negotiated for the management of hazardous waste outside the State, and the extent to which the State should obligate itself to provide facilities for the management of hazardous waste generated outside the State. The Governor shall take into consideration the comprehensive waste management plan developed pursuant to G.S. 130A-294(i) in making any determination under this subsection. Such determination shall be made in writing and shall specify the functions, technologies, and design capacities of the hazardous waste facility to be established.

(b) With respect to each hazardous waste facility to be established pursuant to this Chapter the Governor shall:

(1) Authorize the establishment of the facility as provided in subsection (a) of this section;

(2) Approve and modify as necessary a schedule for selection of the preferred and alternate sites for the facility;

(3) Approve and modify as necessary a schedule for the development of the facility; and

(4) Approve the technology and design capacity of each component of the facility.

(c) The Governor is authorized to enter into interstate agreements for the management of hazardous waste. Such agreements shall provide for access to suitable facilities for management of hazardous waste; encourage reductions in the volume or quantity and toxicity of hazardous waste; distribute the costs, benefits, and obligations of hazardous waste management equitably among the party states; and provide for protection of human health and the environment in a manner that is both ecologically and economically sound. In negotiating such agreements, the Governor may request such assistance as he deems appropriate from the Attorney General, the Division of Waste Management of the Department, and the Commission. The Governor shall submit any such agreement to the General Assembly for its approval, and no such agreement shall be effective until approved by the General Assembly. (1989, c. 168, s. 1; 1993, c. 501, s. 18; 1995 (Reg. Sess., 1996), c. 743, s. 5.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted "Division of Waste Management" for "Solid Waste Management Division" in subsection (c).

§ 130B-7. Powers and duties of the Commission.

(a) To carry out the purposes of this Chapter, the Commission:

(1) Shall (i) with the assistance of the Division of Waste Management of the Department, periodically review current and projected hazardous waste generation from all sources within the State, the current and projected effect of efforts to minimize and reduce the generation of hazardous waste, the potential for further reductions in the generation of hazardous waste, current and projected availability and adequacy of facilities for the management of hazardous waste within and outside the State, whether and to what extent private enterprise will provide needed hazardous waste facilities, and capacity assurance requirements under CERCLA/SARA, (ii) determine whether additional facilities for the management of hazardous waste may be needed in this State, and (iii) make appropriate recommendations to the Governor and the General Assembly;

(2) Shall, at the request of the Governor and under his direction, assist with the negotiation of interstate agreements for the management of hazardous waste;

(3) Shall determine the sequence of tasks required to be accomplished in order to site, design, finance, construct, and place

into operation each authorized hazardous waste facility, determine the time likely to be required to accomplish those tasks, develop a proposed schedule for the development of each such facility and submit such schedule to the Governor for approval, and estimate the resources required to accomplish those tasks and submit such estimate to the Governor and the General Assembly;

(4) Shall site, design, finance, construct, and operate authorized hazardous waste facilities;

(5) Shall adopt, consistent with the rules of the Commission for Health Services and pursuant to Chapter 150B of the General Statutes, rules specifying the criteria and procedures for evaluating alternative locations for, and siting of, hazardous waste facilities;

(6) May employ consultants and contractors to provide services including site selection, design, construction, operation, closure, and perpetual care of hazardous waste facilities, necessary, desirable, or convenient to carry out the purposes of this Chapter, and to fix and pay their compensation;

(7) May acquire by deed, purchase, lease, contract, gift, devise, condemnation, or otherwise, any real or personal property, structures, rights-of-way, franchises, easements, and other interests in land which is necessary and convenient for the construction or operation of hazardous waste facilities, upon such terms and conditions as it deems advisable, hold, mortgage, pledge, or otherwise encumber the same, and lease, sell, convey, or otherwise dispose of the same in such manner as may be necessary or desirable to carry out the purposes of this Chapter;

(8) May exercise the powers of a body corporate, including the power to sue and be sued, and may adopt and use a common seal and alter the same as may be deemed expedient;

(9) May make all necessary contracts and arrangements with other officials or agencies in this State and other states, including compact commissions, for any of the purposes of this Chapter;

(10) Shall establish an office or offices for the transaction of its business at such place or places as, in the opinion of the Commission, shall be advisable or necessary in carrying out the purposes of this Chapter;

(11) May create and operate any divisions it deems necessary or useful;

(12) Shall pay all costs of the formation and organization of the Commission, and incident to its administration and operation, and may pay all other costs necessary in carrying out the purposes of this Chapter;

(13) May develop and implement schedules of fees and other charges, including user charges, penalties, and surcharges applicable to hazardous waste facilities operated by the Commission;

(14) Shall make recommendations to the Governor as to the technology, design capacity, operational features, and post-closure requirements of authorized hazardous waste facilities, and shall implement such recommendations upon approval by the Governor;

(15) Shall pay, or assure that permittees and operators pay, all applicable taxes and fees;

(16) May apply for, accept, and expend loans and grants of money from any federal or State agency or any political subdivision thereof, from a compact commission, or from any other public or private source for any of the purposes authorized by this Chapter, and to give any evidences of indebtedness as may be required. Except as may hereafter be authorized by the General Assembly, no indebtedness of any kind incurred or created by the Commission shall constitute an indebtedness of the State or any of its political subdivisions, and no such indebtedness shall involve or be secured by the faith, credit, or taxing power of the State or any of its political subdivisions. At no time may the total outstanding indebtedness of the Commission, excluding bond indebtedness, exceed a total of five hundred thousand dollars ($500,000) without prior approval of the Governor, after receiving the advice of the Advisory Budget Commission;

(17) May issue revenue bonds from time to time pursuant to the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, and such bonds may be sold at public or private sale pursuant to G.S. 159-123;

(18) Shall, if it elects to issue bonds, select and retain, subject to approval of the Local Government Commission, financial consultants, underwriters, and bond attorneys to assist with the issuance of such bonds and to pay for services rendered;

(19) May pledge revenues from hazardous waste facilities to the benefit of bondholders, or for other purposes necessary to secure financing;

(20) Shall make such plans, surveys, studies, and investigations as may be necessary or desirable with respect to the acquisition, development, and use of real property and the design, construction, operation, closure, and long-term care of hazardous waste facilities;

(21) Shall receive all field data, charts, maps, tracings, laboratory test data, soil and rock samples, and such other records as the Commission deems appropriate, collected or produced by its employees, contractors, or consultants pursuant to siting, operating, or closing of hazardous waste facilities. All such data and materials shall become the property of the State and shall not be disposed of except in accordance with G.S. 132-3 except that soil and rock samples may be subjected to tests and reduced in volume for purposes of storage in a manner approved by the Commission. The Commission may enter into agreements with other State agencies for the purpose of storage and preservation of data and materials;

(22) May procure and keep in force adequate insurance or otherwise provide for the indemnification of itself and its members, officers, agents, employees, and the general public against loss or liability resulting from any act or omission by or on behalf of the Commission, and for the protection of its property, provided that procurement of

insurance by the Commission shall not be deemed a waiver of any immunity from liability otherwise available under any provision of law;

(23) May adopt bylaws for the regulation of its affairs and the conduct of its business;

(24) May adopt rules, in accordance with the provisions of Chapter 150B of the General Statutes, with respect to any of its powers and duties; and

(25) May do anything else necessary to carry out the purposes of this Chapter not otherwise prohibited by law. (1989, c. 168, s. 1; 1993, c. 501, s. 20; 1995 (Reg. Sess., 1996), c. 743, s. 6.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted "Division of Waste Management" for "Solid Waste Management Division" in subdivision (a)(1).

§ 130B-16. Fees.

(a) It is the intent of the General Assembly that all costs associated with the development of hazardous waste facilities pursuant to this Chapter be borne by the waste generators served by such facilities. The General Assembly recognizes that the extent to which costs can be passed to hazardous waste generators is determined in part by market forces, since hazardous waste facilities must operate in a competitive market. In establishing and revising schedules of fees, the Commission shall seek to secure the greatest possible revenue for the State and units of local government consistent with environmentally safe and economically sound facility operation. In establishing and revising schedules of fees, the Commission may seek to encourage reductions in the volume or quantity and toxicity of hazardous waste. For facilities which it operates, the Commission shall establish, and revise as necessary, schedules of fees and other charges, including user charges, penalties, and surcharges. For facilities which are operated by private enterprise pursuant to this Chapter, the Commission shall establish, and revise as necessary, schedules of franchise fees. The terms and conditions under which facilities are operated by private enterprise pursuant to this Chapter shall be governed by appropriate contracts between the Commission and the private operators. Such contracts shall provide for the payment of franchise fees and for the periodic adjustment thereof.

(b) In establishing and revising schedules of fees the Commission shall consider and shall seek to recover to the maximum extent possible, the following costs:

(1) Establishment and operation of the Commission;

(2) Reimbursement of State agencies for costs incurred on behalf of the Commission or in support of its activities, including the costs of any services performed pursuant to G.S. 130B-15;

(3) Establishment and administration of the Long-Term Care Fund under G.S. 130B-17;

(4) Repayment to the State with interest at rates which are equal to those set by the State Treasurer with respect to savings certificates and certificates of deposit, at the varying rates applicable for the period between expenditures

and repayment, of all funds expended from the General Fund to develop hazardous waste facilities pursuant to this Chapter;

(5) Funding of the State's share of the costs associated with any interstate agreement or compact for hazardous waste management to which the State may become a party;

(6) Compensation of contractors and consultants employed by the Commission;

(7) Other expenses incurred by the Commission, the State or its agencies in furtherance of the purposes of this Chapter; and

(8) Compensation of any property owner for any loss in value of property directly resulting from the siting or operation of a hazardous waste facility.

(c) In the event that revenues exceed all costs set out in subsection (b) of this section and all other costs and charges for which the Commission is liable, such excess funds shall be paid into the General Fund. It is the intent of the General Assembly that such excess funds be appropriated for the following purposes:

(1) Funding of a portion of the State's share of the costs for remediation of inactive hazardous sites under Part 3 of Article 9 of Chapter 130A of the General Statutes and under CERCLA/SARA; and

(2) Funding of a portion of the cost of the Pollution Prevention Pays Program, the waste minimization program administered by the Technical Assistance and Support Unit of the Division of Waste Management of the Department, other programs which foster multimedia waste prevention, reduction, reuse, and recycling, and programs which provide assistance to small quantity generators.

(d) The Commission shall prepare, on a quarterly basis, a detailed financial statement showing its current fee schedules, income from all sources, indebtedness, and expenses for the quarter and fiscal year to date. This statement, and any other information regarding the operation or activities of the Commission which may be requested, shall be submitted to the chairmen of the House and Senate committees on Finance and Appropriations, the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, the Research Division, and the Fiscal Research Division of the General Assembly.

(e) An operator of a hazardous waste facility may serve as the collection agent for the Commission, in which case, funds collected by the operator shall be transferred to the Commission on a timely basis, and deposited with the State Treasurer, as directed by the Commission.

(f) All Commission accounts shall be audited pursuant to the provisions of Article 5A of Chapter 147 of the General Statutes. (1989, c. 168, s. 1; 1995 (Reg. Sess., 1996), c. 743, s. 7.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted "Division of Waste Management" for "Solid Waste Management Division" in subsection (c)(2).

§ 130B-22. Inter-Agency Committee on Hazardous Waste.

(a) To assist the Commission in the performance of its responsibilities under this Chapter and to advise the General Assembly, there is created the Inter-Agency Committee on Hazardous Waste (herein called the "Committee"). The members shall be: the Secretary or the Secretary's designee; the Director of the Division of Waste Management of the Department or his designee; the Chief of the Hazardous Waste Management Section of the Division of Waste Management or his designee; one additional representative of the Division of Waste Management with expertise in CERCLA/SARA capacity assurance requirements appointed by the Director of the Division, the Chairman of the Commission or his designee; one additional member of the Commission appointed by the Chairman of the Commission; the Executive Director of the Commission; the Director of the Pollution Prevention Pays Program; four representatives of the Department of Environment and Natural Resources with expertise in geology, groundwater, water quality, and air quality; the representative of the Attorney General's office who provides legal services to the Commission; and a representative of the Attorney General's office who provides legal services to the Division of Waste Management designated by the Director of the Division of Waste Management with the approval of the Attorney General. The Secretary or the Secretary's designee shall serve as the Chairman of the Committee, and the Division of Waste Management of the Department shall provide professional and clerical support to the Committee.

(b) The purpose of the Committee is to share information and coordinate efforts in the siting, design, financing, permitting, construction, and operation of hazardous waste facilities.

(c) The Committee shall report to the Governor, the General Assembly, and the Research and Fiscal Research Divisions of the General Assembly from time to time regarding any changes in the present law it may deem appropriate to expedite siting, design, financing, permitting, construction, and operation of hazardous waste facilities. Such reports shall not be subject to review by the departments, agencies, boards, or commissions from whose membership the Committee is drawn. Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation made by the Committee may be introduced and considered during any session of the General Assembly.

(d) Consistent with existing law, each department, agency, board, or commission from whose membership the Committee is drawn shall be responsible for any expenses incident to the participation of its members in the work of the Committee, including per diem, travel, and subsistence, from funds otherwise appropriated to it. (1989, c. 168, s. 1; c. 727, s. 218(87); 1993, c. 501, s. 26; 1995 (Reg. Sess., 1996), c. 743, s. 8; 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted "Division of Waste Management" for "Solid Waste Management Division" throughout subsection (a).

The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

Chapter 131A.

Health Care Facilities Finance Act.

Sec.
131A-2. Legislative findings.
131A-19. Annual report.
131A-21. Tax exemption.

§ 131A-2. Legislative findings.

It is hereby declared to be the policy of the State of North Carolina to promote the public health and welfare by providing means for financing, refinancing, acquiring, constructing, equipping and providing of health care facilities to serve the people of the State and to make accessible to them modern and efficient health care facilities.

The General Assembly hereby finds and declares that:

(1) There is a need to overcome existing and anticipated physical and technical obsolescence of existing health care facilities and to provide additional modern and efficient health care facilities in the State; and

(2) Unless measures are adopted to alleviate such need, the shortage of such facilities will become increasingly more urgent and serious; and

(3) In order to meet such shortage and thereby promote the public health and welfare of the people of the State, it is necessary for the State to assist in the providing of adequate modern and efficient health care facilities in the State so that health and hospital care and services may be expanded, improved and fostered to the fullest extent practicable.

The General Assembly hereby further finds and declares that the financing, refinancing, acquiring, constructing, equipping and providing of health care facilities are public uses and public purposes and that enactment of this Chapter is necessary and proper for effectuating the purposes hereof. (1975, c. 766, s. 1; 1993, c. 553, s. 42.)

§ 131A-3. Definitions.

Cross References. — As to the definition of "Long-term care facility" in the Long-Term Care Ombudsman Program, see § 143B-181.16.

§ 131A-19. Annual report.

The Commission shall, promptly following the close of each fiscal year, submit an annual report of its activities under this Chapter for the preceding year to the Governor, the State Auditor, the Secretary of Health and Human Services, the General Assembly, the Advisory Budget Commission and the Local Government Commission. The Commission shall cause an audit of its books and accounts relating to its activities under this Chapter to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available moneys of the Commission. (1975, c. 766, s. 1; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 131A-21. Tax exemption.

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State and will promote their health and welfare, and no tax or assessment shall be levied upon any health care facilities undertaken by the Commission prior to the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the Commission in connection with such health care facilities.

Any bonds or notes issued by the Commission under the provisions of this Chapter shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income. (1975, c. 766, s. 1; 1995, c. 46, s. 12.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Chapter 131D.

Editor's Note. — The legislation and annotations affecting Chapter 131D have been included in a recently published replacement chapter.

Chapter 131E.

Editor's Note. — The legislation and annotations affecting Chapter 131E have been included in a recently published replacement chapter.

Chapter 131F.

Editor's Note. — The legislation and annotations affecting Chapter 131F have been included in a recently published replacement chapter.

Chapter 132.

Public Records.

Sec.
132-1.1. Confidential communications by legal counsel to public board or agency; State tax information.
132-1.5. 911 database.
132-3. Destruction of records regulated.
132-10. Qualified exception for geographical information systems.

§ 132-1. "Public records" defined.

Local Modification. — By virtue of Session Laws 1997-410, Avery: 1993, c. 472, s. 1 should be stricken from the main volume. By virtue of Session Laws 1997-447, s. 1, City of Goldsboro: 1991, c. 555, s. 5 should be stricken from the main volume. By virtue of Session Laws 1997-364, s. 8, Town of Caswell Beach: 1991, c. 664, s. 1(c); Town of Holden Beach: 1987 (Reg. Sess., 1988), c. 963, s. 1(c); Town of Sunset Beach; 1987 (Reg. Sess., 1988), c. 956, s. 1(c); and Town of Yaupon Beach: 1991 (Reg. Sess., 1992), c. 820 should be stricken from the main volume.

CASE NOTES

Stated in Times-News Publishing Co. v. State, 124 N.C. App. 175, 476 S.E.2d 450 (1996).

§ 132-1.1. Confidential communications by legal counsel to public board or agency; State tax information.

(a) Confidential Communications. — Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body.

(b) State and Local Tax Information. — Tax information may not be disclosed except as provided in G.S. 105-259. As used in this subsection, "tax information" has the same meaning as in G.S. 105-259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in

G.S. 153A-148.1 and G.S. 160A-208.1. (1975, c. 662; 1993, c. 485, s. 38; 1995 (Reg. Sess., 1996), c. 646, s. 21.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, in subsection (b), inserted "and Local" in the subcatchline, deleted "153A-148.1, and 160A-208.1" from the end of the first sentence, and added the last sentence.

§ 132-1.2. Confidential information.

CASE NOTES

Price Lists in Contract Between Hospital and HMO. — Where price lists in a contract between a public hospital and a private HMO are not property of a private person within the meaning of this section, they are not trade secrets as defined by § 66-152(3) and are subject to disclosure under the North Carolina Public Records Act, pursuant to § 132-1 et seq. Wilmington Star-News, Inc. v. New Hanover Regional Medical Ctr., Inc., 125 N.C. App. 174, 480 S.E.2d 53 (1997).

§ 132-1.4. Criminal investigations; intelligence information records.

CASE NOTES

Records for Reinvestigation. — Where exhibits were returned to district attorney's office at the conclusion of first trial for use in the reinvestigation and preparation of a retrial, the exhibits again became "records of criminal investigations" and were specifically exempted from disclosure under subsection (g). Times-News Publishing Co. v. State, 124 N.C. App. 175, 476 S.E.2d 450 (1996).

§ 132-1.5. 911 database.

Automatic number identification and automatic location identification information that consists of the name, address, and telephone numbers of telephone subscribers which is contained in a county 911 database is confidential and is not a public record as defined by Chapter 132 of the General Statutes if that information is required to be confidential by the agreement with the telephone company by which the information was obtained. Dissemination of the information contained in the 911 automatic number and automatic location database is prohibited except on a call-by-call basis only for the purpose of handling emergency calls or for training, and any permanent record of the information shall be secured by the public safety answering points and disposed of in a manner which will retain that security except as otherwise required by applicable law. (1997-287, s. 1.)

Editor's Note. — Session Laws 1997-287, s. 2, made this section effective July 10, 1997.

§ 132-3. Destruction of records regulated.

(a) Prohibition. — No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with G.S. 121-5 and G.S. 130A-99, without the consent of the Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined not less than ten dollars ($10.00) nor more than five hundred dollars ($500.00).

(b) Revenue Records. — Notwithstanding subsection (a) of this section and G.S. 121-5, when a record of the Department of Revenue has been copied in any manner, the original record may be destroyed upon the order of the Secretary of Revenue. If a record of the Department of Revenue has not been copied, the original record shall be preserved for at least three years. After three years the original record may be destroyed upon the order of the Secretary of Revenue. (1935, c. 265, s. 3; 1943, c. 237; 1953, c. 675, s. 17; 1957, c. 330, s. 2; 1973, c. 476, s. 48; 1993, c. 485, s. 39; c. 539, s. 966; 1994, Ex. Sess., c. 24, s. 14(c); 1997-309, s. 12.)

Editor's Note. —

Session Laws 1997-309, s. 15, provides that the removal and destruction by a register of deeds of any out-of-county birth certificates prior to the effective date of that act is valid, and the register of deeds is not in violation of G.S. 121-5 or G.S. 132-3.

Effect of Amendments. — The 1997 amendment, effective July 17, 1997, inserted "and G.S. 130A-99" in subsection (a).

§ 132-9. Access to records.

CASE NOTES

Stated in Shella v. Moon, 125 N.C. App. 607, 481 S.E.2d 363 (1997).

§ 132-10. Qualified exception for geographical information systems.

Geographical information systems databases and data files developed and operated by counties and cities are public records within the meaning of this Chapter. The county or city shall provide public access to such systems by public access terminals or other output devices. Upon request, the county or city shall furnish copies, in documentary or electronic form, to anyone requesting them at reasonable cost. As a condition of furnishing an electronic copy, whether on magnetic tape, magnetic disk, compact disk, or photo-optical device, a county or city may require that the person obtaining the copy agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. For purposes of this section, publication or broadcast by the news media, real estate trade associations, or Multiple Listing Services operated by real estate trade associations shall not constitute a resale or use of the data for trade or commercial purposes and use of information without resale by a licensed professional in the course of practicing the professional's profession shall not constitute use for a commercial purpose. For purposes of this section, resale at cost by a real estate trade association or Multiple Listing Services operated by a real estate trade association shall not constitute a resale or use of the data for trade or commercial purposes. (1995, c. 388, s. 5; 1997-193, s. 1.)

Editor's Note. — Session Laws 1995, c. 151 which made a qualified public records exception from the public records act for the Geographical information systems of the cities of Concord, Greensboro, High Point and Salisbury and Cabarrus, Cumberland and Gulford Counties was essentially the same as this section.

Effect of Amendments. — The 1997 amendment, effective June 19, 1997, added "real estate trade associations, or Multiple Listing Services operated by real estate trade associations" following "news media" in the fifth sentence; and added the last sentence.

Chapter 133.

Public Works.

Article 1.

General Provisions.

Sec.

133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.
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Sec.

133-4.1. Guaranteed energy savings contracts.

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Regulation of Contractors for Public Works.

133-23. Definition.
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133-31. Perjury; punishment.
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ARTICLE 1.

General Provisions.

§ 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.

(a) In the interest of public health, safety and economy, every officer, board, department, or commission charged with the duty of approving plans and specifications or awarding or entering into contracts involving the expenditure of public funds in excess of:

(1) One hundred thousand dollars ($100,000) for the repair of public buildings where such repair does not include major structural change in framing or foundation support systems,

(2) Forty-five thousand dollars ($45,000) for the repair of public buildings where such repair includes major structural change in framing or foundation support systems, or

(3) Forty-five thousand dollars ($45,000) for the construction of, or additions to, public buildings or State-owned and operated utilities,

shall require that such plans and specifications be prepared by a registered architect, in accordance with the provisions of Chapter 83A of the General Statutes, or by a registered engineer, in accordance with the provisions of Chapter 89C of the General Statutes, or by both architect and engineer, particularly qualified by training and experience for the type of work involved, and that the North Carolina seal of such architect or engineer together with the name and address of such architect or engineer, or both, be placed on all such plans and specifications.

(b)(1) On all projects requiring the services of an architect, an architect shall conduct frequent and regular inspections or such inspections as required by contract and shall issue a signed and sealed certificate of compliance to the awarding authority that:

a. The inspections of the construction, repairs or installations have been conducted with the degree of care and professional skill and judgment ordinarily exercised by a member of that profession; and

b. To the best of his knowledge and in the professional opinion of the architect, the contractor has fulfilled the obligations of such plans, specifications, and contract.

(2) On all projects requiring the services of an engineer, an engineer shall conduct frequent and regular inspections or such inspections as required by contract and shall issue a signed and sealed certificate of compliance to the awarding authority that:

a. The inspections of the construction, repairs, or installations have been conducted with the degree of care and professional skill and judgment ordinarily exercised by a member of that profession; and

b. To the best of his knowledge and in the professional opinion of the engineer, the contractor has fulfilled the obligations of such plans, specifications, and contract.

(3) No certificate of compliance shall be issued until the architect and/or engineer is satisfied that the contractor has fulfilled the obligations of such plans, specifications, and contract.

(c) The following shall be excepted from the requirements of subsection (a) of this section:

(1) Dwellings and outbuildings in connection therewith, such as barns and private garages.

(2) Apartment buildings used exclusively as the residence of not more than two families.

(3) Buildings used for agricultural purposes other than schools or assembly halls which are not within the limits of a city or an incorporated village.

(4) Temporary buildings or sheds used exclusively for construction purposes, not exceeding 20 feet in any direction, and not used for living quarters.

(d) **(Effective until July 1, 2001)** On projects on which no registered architect or engineer is required pursuant to the provisions of this section, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from the city or county inspector for the specific trade or trades involved or from a registered architect or engineer, except that the provisions of this subsection shall not apply on projects (i) wherein plans and specifications are approved by the Department of Administration, Division of State Construction, and the completed project is inspected by the Division of State Construction and the State Electrical Inspector, (ii) that are exempt from the State Building Code, or (iii) that are subject to G.S. 116-31.11 and the completed project is inspected by the State Electrical Inspector and by The University of North Carolina or its constituent or affiliated institution.

(d) **(Effective July 1, 2001)** On projects on which no registered architect or engineer is required pursuant to the provisions of this section, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from the city or county inspector for the specific trade or trades involved or from a registered architect or engineer, except that the provisions of this subsection shall not apply on projects wherein plans and specifications are approved by the Department of Administration, Division of

§ 133-1.1(d) is set out twice. See notes.

State Construction, and the completed project is inspected by the Division of State Construction and the State Electrical Inspector, or on projects exempt from the State Building Code.

(e) All plans and specifications for public buildings of any kind shall be identified by the name and address of the author thereof.

(f) Neither the designer nor the contractor involved shall receive his final payment until the required certificate of compliance shall have been received by the awarding authority.

(g) On all facilities which are covered by this Article, other than those listed in subsection (c) of this section and which require any job-installed finishes, the plans and specifications shall include the color schedule. (1953, c. 1339; 1957, c. 994; 1963, c. 752; 1973, c. 1414, s. 2; 1979, c. 891; 1981, c. 687; 1983 (Reg. Sess., 1984), c. 970, s. 1; 1989, c. 24; 1997-412, s. 11.)

Subsection (d) set out twice. — The first version of subsection (d) set out above is effective until July 1, 2001. The second version of subsection (d) set out above is effective July 1, 2001.

Editor's Note. — As to exemption of the Office of State Budget and Management from the requirements of this section in the administration and implementation of the Prison Facilities Legislative Bond Act of 1990, see Session Laws 1989 (Reg. Sess., 1990), c. 933, s. 6(4).

As to the exemption of the Office of State Budget and Management from the requirements of this section in the implementation of providing prison facilities under the provisions of the State Prison and Youth Services Facilities Bond Act, see Session Laws 1989 (Reg. Sess., 1990), c. 935, s. 6(a)(4).

As to exemption of the Office of State Budget and Management from the requirements of subsection (b) of this section with respect to facilities authorized for the Department of Correction, see Session Laws 1991, c. 689, s. 239(f), as amended by Session Laws 1991 (Reg. Sess., 1992), c. 1044, s. 41(b).

Session Laws 1991, c. 689, s. 352 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1991-93 biennium, the textual provisions of Titles I, II, and III of this act shall apply only to funds appropriated for and activities occurring during the 1991-93 biennium."

As to exemption of the Office of State Construction of the Department of Administration from subsection (g) of this section to the extent necessary to expedite delivery with respect to construction of certain state prison and youth service facilities, see Session Laws 1993, c. 550, s. 6.

As to exemption of the Office of State Construction of the Department of Administration from the requirements of subsection (g) of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), 143-128, 143-129, 143-131, 143-132, 143-134, 143-135.26, and 143-408.1 through 143-408.7.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 contains a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a), provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

Session Laws 1997-412, s. 14 provides that s. 11 of that act, which amended subsection (d), expires July 1, 2001.

Effect of Amendments. — The 1997 amendment, effective January 1, 1998, in subsection (d), inserted the subdivision (i) and (ii) designations and inserted subdivision (iii); and substituted "that are" for "or on projects" preceding "exempt." See editor's note for expiration.

§ 133-3. Specifications to carry competitive items; substitution of materials.

All architects, engineers, designers, or draftsmen, when providing design services, or writing specifications, directly or indirectly, for materials to be used in any city, county or State work, shall specify in their plans the required performance and design characteristics of such materials. However, when it is impossible or impractical to specify the required performance and design characteristics for such materials, then the architect, engineer, designer or draftsman may use a brand name specification so long as they cite three or more examples of items of equal design or equivalent design, which would establish an acceptable range for items of equal or equivalent design. The specifications shall state clearly that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Where it is impossible to specify performance and design characteristics for such materials and impossible to cite three or more items due to the fact that there are not that many items of similar or equivalent design in competition, then as many items as are available shall be cited. On all city, county or State works, the maximum interchangeability and compatibility of cited items shall be required. The brand of product used on a city, county or State work shall not limit competitive bidding on future works. If an architect, engineer, designer, draftsman or owner prefers a particular brand of material, then such brand shall be bid as an alternate to the base bid and in such case the base bid shall cite three or more examples of items of equal or equivalent design, which would establish an acceptable range for items of equal or equivalent design. Substitution of materials, items, or equipment of equal or equivalent design shall be submitted to the architect or engineer for approval or disapproval; such approval or disapproval shall be made by the architect or engineer prior to the opening of bids. The purpose of this statute is to mandate and encourage free and open competition on public contracts. (1933, c. 66, s. 3; 1951, c. 1104, s. 5; 1993, c. 334, s. 7.1.)

Editor's Note. — Session Laws 1993, c. 334, s. 7.1, amended this section, effective July 13, 1993, and applicable to all construction and renovation projects for any city, county or State works that start the design process on or after that date.

§ 133-4. Violation of Chapter made misdemeanor.

Any person, firm, or corporation violating the provisions of this Chapter shall be guilty of a Class 3 misdemeanor and upon conviction, license to practice his profession in this State shall be withdrawn for a period of one year and he shall only be subject to a fine of not more than five hundred dollars ($500.00). (1933, c. 66, s. 4; 1993, c. 539, s. 969; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 969, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 133-4.1. Guaranteed energy savings contracts.

Except for G.S. 133-1.1, the provisions of this Article shall not apply to energy conservation measures undertaken as part of a guaranteed energy savings contract entered into pursuant to the provisions of Part 2 of Article 3B of Chapter 143 of the General Statutes. (1993 (Reg. Sess., 1994), c. 775, s. 8.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 775, s. 11, made this section effective upon ratification. The Act was ratified July 16, 1994.

ARTICLE 2.

Relocation Assistance.

§ 133-7. Definitions.

Editor's Note. —
In the historical citation for this section in the main volume, "1989, c. 25" should be "1989, c. 28."

§ 133-9. Replacement housing for homeowners.

Local Modification. — City of Durham: 1993, c. 304, s.1.

ARTICLE 3.

Regulation of Contractors for Public Works.

§ 133-23. Definition.

(a) The term "governmental agency" shall include the State of North Carolina, its agencies, institutions, and political subdivisions, all municipal corporations and all other public units, agencies and authorities which are authorized to enter into public contracts for construction or repair or for procurement of goods or services.

(b) The term "person" shall mean any individual, partnership, corporation, association, or other entity formed for the purpose of doing business as a contractor, subcontractor, or supplier.

(c) The term "subsidiary" shall mean a corporation with respect to which another corporation by virtue of its shareholdings alone has legal power, either directly or indirectly through another corporation or series of other corporations, domestic or foreign, to elect a majority of the directors. A corporation is a subsidiary of each such corporation, including any corporation through which this legal power may be indirectly exercised. (1981, c. 764, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 38.)

§ 133-28. Civil damages; liability; statute of limitations.

(a) Any governmental agency entering into a contract which is or has been the subject of a conspiracy prohibited by G.S. 75-1 or 75-2 shall have a right of action against the participants in the conspiracy to recover damages, as provided herein. The governmental agency shall have the option to proceed jointly and severally in a civil action against any one or more of the participants for recovery of the full amount of the damages. There shall be no right to contribution among participants not named defendants by the governmental agency.

(b) At the election of the governmental agency, the measure of damages recoverable under this section shall be either the actual damages or ten percent (10%) of the contract price which shall be trebled as provided in G.S. 75-16.

(c) The cause of action shall accrue at the time of discovery of the conspiracy by the governmental agency which entered into the contract. The action shall be brought within six years of the date of accrual of the cause of action. (1981, c. 764, s. 1; 1993, c. 441, s. 1.)

§ 133-31. Perjury; punishment.

Any person who shall willfully commit perjury in any affidavit taken pursuant to this Article or rules pursuant thereto shall be guilty of a felony and shall be punished as a Class I felon. (1981, c. 764, s. 1; 1993, c. 539, s. 1307; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1307, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 133-32. Gifts and favors regulated.

(a) It shall be unlawful for any contractor, subcontractor, or supplier who:

(1) Has a contract with a governmental agency; or

(2) Has performed under such a contract within the past year; or

(3) Anticipates bidding on such a contract in the future
to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of:

(1) Preparing plans, specifications, or estimates for public contract; or
(2) Awarding or administering public contracts; or
(3) Inspecting or supervising construction.

It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of:

(1) Preparing plans, specifications, or estimates for public contracts; or
(2) Awarding or administering public contracts; or
(3) Inspecting or supervising construction

willfully to receive or accept any such gift or favor.

(b) A violation of subsection (a) shall be a Class 1 misdemeanor.

(c) Gifts or favors made unlawful by this section shall not be allowed as a deduction for North Carolina tax purposes by any contractor, subcontractor or supplier or officers or employees thereof.

(d) This section is not intended to prevent the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift. (1981, c. 764, s. 1; 1987, c. 399, s. 1; 1993, c. 539, s. 970; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 970, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Chapter 134A.

Youth Services.

Article 1.

Division of Youth Services in the Department of Human Resources.

Sec.
134A-1. Legislative intent and purpose.
134A-2. Definitions.
134A-6. Transfer of institutions.

Sec.
134A-8. Powers and duties of Secretary of Health and Human Services.

ARTICLE 1.

Division of Youth Services in the Department of Health and Human Services.

§ 134A-1. Legislative intent and purpose.

The General Assembly hereby declares its intent and legislative policy to separate the administration of training schools for committed delinquents from the adult corrections system to avoid the stigma and punitive philosophy associated with penal facilities for convicted adult offenders. It is further intended that institutional programs for delinquents provide appropriate treatment and care according to the needs of the children in care and that such programs be appropriately coordinated with other services for children within the Department of Health and Human Services. (1975, c. 742, s. 1; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 23.20, provides for the funding of treatment and education programs for children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior, identified as a Class in the case of Willie M., et al v. Hunt, et al.; s. 23.20(b) provides that funds appropriated by the General Assembly to the Department of Human Resources for serving members of the Willie M. Class shall be expended only for programs serving members of that Class identified in Willie M., et al v. Hunt, et al., including evaluations of potential Class members, and that the Department shall reallocate these funds among services to Class members during the year as it deems advisable; s. 23.20(d) provides for the Department to continue to implement its prospective unit cost reimbursement system, to ensure that unit cost rates reflect reasonable costs, and to reduce and/or cap rates to programs which are significantly higher than those rates paid to other programs for the same service; s. 23.20(d1) provides for review by the Department of cases whose annual cost is anticipated to be in excess of 150% of the average annual per client expenditure of the previous fiscal year; s. 23.20(e1) provides for the Department to document and assess individual Class members' progress through the continuum of services; and s. 23.20(i) provides that if the Department determines a local program is not providing appropriate services, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation of the programs.

Session Laws 1995, c. 324, s. 23.20(e), provides that the Department of Human Resources and the Department of Public Education shall submit, by May 1 of each fiscal year, a joint report to the Governor and the General Assembly on the progress achieved in serving members of the Willie M. Class, which shall include specified data for each county; and s. 23.20(f) provides that those departments shall provide periodic reports of expenditures and program effectiveness on behalf of the Willie M. Class to the Fiscal Research Division, which shall include explanations of measures they have taken to control and reduce program expenditures.

Session Laws 1995, c. 324, s. 23.20(h), provides that the use of unexpended Willie M. funds from prior fiscal years to cover current or future needs of the Willie M. program is not precluded by the limitation that no funds be expended on placement and services for Willie M. Class members except funds specifically appropriated by the General Assembly for members, or funds for placement or services for which members are otherwise eligible; and that these expenditures shall not be subject to the requirements of G.S. 143-18.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 35.4, is a severability clause.

Session Laws 1997-443, s. 11.35, provides for the funding of treatment and education programs for children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior, identified as a Class in the case of Willie M., et al v. Hunt, et al., and defined in G.S. 122C-3(13a) as Eligible Assaultive and Violent Children; s. 11.35(b) provides that funds appropriated by the General Assembly to the Department of Human Resources for serving members of the Willie M. Class shall be expended only for programs serving members of that Class identified in Willie M., et al v. Hunt, et al., or defined in G.S. 122C-3(13a) as Eligible Assaultive and Violent Children, including evaluations of potential Class members, and that the Department shall reallocate these funds among services to Class members during the year as it deems advisable; s. 11.35(d) provides for the Department to continue to implement its prospective unit cost reimbursement system, to ensure that unit cost rates reflect reasonable costs, and to reduce and/or cap rates to programs which are significantly higher than those rates paid to other programs for the same service; s. 11.35(d1) provides for review by the Department of cases whose annual cost is anticipated to be in excess of 150% of the average annual per client expenditure of the previous fiscal year; s. 11.35(e1) provides for the Department to document and assess individual Class members' progress through the continuum of services; and s. 11.35(i) provides that if the Department determines a local program is not providing appropriate services, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation of the programs.

Session Laws 1997-443, s. 11.35(e), provides that the Department of Human Resources and the Department of Public Education shall submit, by May 1 of each fiscal year, a joint report to the Governor and the General Assembly on the progress achieved in serving members of the Willie M. Class; and s. 11.35(f) provides that those departments shall provide periodic reports of expenditures and program effectiveness on behalf of the Willie M. Class to the Fiscal Research Division, which shall include explanations of measures they have taken to control and reduce program expenditures.

Session Laws 1997-443, s. 11.35(h), provides that the use of unexpended Willie M. funds from prior fiscal years to cover current or future needs of the Willie M. program is not precluded by the limitation that no funds be expended on placement and services for Willie M. Class members except funds specifically appropriated by the General Assembly for members, or funds for placement or services for which members are otherwise eligible; and that these expenditures shall not be subject to the requirements of G.S. 143-18.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Effect of Amendments. — Session Laws 1997-443, ss. 11A.91 and

11A.118(a), effective August 28, 1997, substituted "Department of Health and Human Services" for "Department of Human Resources" in the Article 1 heading and in the section.

§ 134A-2. Definitions.

The following terms or phrases shall be defined as follows in this Chapter unless the context or subject matter otherwise requires:

(1) "Child" is any person who has not reached his sixteenth birthday.

(2) Repealed by Session Laws 1977, c. 627, s. 3.

(3) "County detention home" means one of the existing county-supported detention homes for juveniles or one which may be established by a county or other unit of local government in the future.

(4) "Delinquent child" includes any child subject to the juvenile jurisdiction of the district court as defined by G.S. 7A-278(2) who is subject to commitment to an institution for delinquents under G.S. 7A-286.

(5) "Department" means the Department of Health and Human Services as defined under Chapter 143B, the Executive Organization Act of 1973.

(6) Repealed by Session Laws 1977, c. 627, s. 3.

(7) "Holdover facility" means a place in a local jail approved by the Department of Health and Human Services for detention of a child for not more than five calendar days prior to placement in an approved detention home.

(8) "Institution" means a school, training school or institution for committed delinquents heretofore operated by the Division of Youth Development of the Department of Correction, namely the following: Stonewall Jackson School; Samarkand Manor School; Dobb's School for Girls; Richard T. Fountain School; Cameron Morrison School; C. A. Dillon School; Juvenile Evaluation Center.

(9) "Juvenile detention" refers to detention of a child alleged to be undisciplined or delinquent before or after a juvenile hearing as authorized by G.S. 7A-286(3).

(10) "Regional detention home" means a State-supported and administered regional facility providing detention care as recommended by the report.

(11) "Report" means the Report of the National Juvenile Detention Association entitled Juvenile Detention in North Carolina: A Study Report, released in January 1973.

(12) "Secretary" means the Secretary of Health and Human Services established by G.S. 143B-139.

(13) "Youth services program" means any type of residential or nonresidential program or service for youth that may be developed by the Secretary as authorized by this Chapter. (1975, c. 742, s. 1; 1977, c. 627, ss. 3, 4; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997

amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

OPINIONS OF ATTORNEY GENERAL

Institutions and Transfer of Educational Records. — Local school boards can and should transmit to the Division of Youth Services (DYS) and other Department of Human Resources (DHR) agencies providing educational services to school age children any requested education records of juveniles committed to their custody or control. Once such education records are obtained by DYS or other DHR facilities they are confidential and must not be released except as permitted by the Family Educational Rights and Privacy Act. See opinion of C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

§ 134A-6. Transfer of institutions.

All institutions previously operated by the Division of Youth Development of the Department of Correction and the present central office of said Division of Youth Development (including land, buildings, equipment, supplies, personnel, or other properties rented or controlled for youth development purposes) are hereby transferred to the Department of Health and Human Services which shall administer such institutions and programs as provided by this Chapter. (1975, c. 742, s. 1; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 134A-8. Powers and duties of Secretary of Health and Human Services.

The Secretary shall have the following powers and duties:

(1) To give leadership to the implementation as appropriate of State policy which requires that training schools be phased out as populations diminish;

(2) To close a State training school when its operation is no longer justified and to transfer State funds appropriated for the operation of any training school which is closed to fund community-based programs or to purchase care or services for pre-delinquents, delinquents or status offenders in community-based or other appropriate programs or to improve the efficiency of existing training schools, provided such actions are approved by the Advisory Budget Commission;

(3) To develop a sound admission or intake program to youth services institutions, including the requirement of a careful evaluation of the needs of each child prior to acceptance and placement;

(4) To assure quality programs in youth services institutions or youth services programs which shall be designed to meet the needs of children in care or receiving services;

(5) To provide a quality educational program in each training school, including vocational and technical education which is realistic in relation to available jobs, and to administer this educational system;

(6) To have all other powers of a secretary in relation to a division of youth services or youth services institutions or youth services programs as provided by the Executive Organization Act of 1973 as amended and codified in Chapter 143B or as provided by any other appropriate State law.

(7) To promulgate rules and regulations to implement the provisions of this Chapter and the responsibilities of the Secretary and the Department of Health and Human Services under Chapter 7A. (1977, c. 627, s. 6; 1981, c. 50, s. 6; c. 614, s. 18; 1993, c. 180, s. 6; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

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Commitment and Care.

§ 134A-20. Program.

OPINIONS OF ATTORNEY GENERAL

Transfer of Educational Records. — Local school boards can and should transmit to the Division of Youth Services (DYS) and other Department of Human Resources (DHR) agencies providing educational services to school age children any requested education records of juveniles committed to their custody or control. Once such education records are obtained by DYS or other DHR facilities they are confidential and must not be released except as permitted by the Family Educational Rights and Privacy Act. See opinion of C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

Chapter 135.

Editor's Note. — The legislation and annotations affecting Chapter 135 have been included in a recently published replacement chapter.

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ARTICLE 1.

Organization of Department of Transportation.

§ 136-12. Reports to General Assembly; Transportation Improvement Program submitted to members and staff of General Assembly.

(a) The Department of Transportation shall, on or before the tenth day after the convening of each regular session of the General Assembly of North Carolina, make a full printed, detailed report to the General Assembly, showing the construction and maintenance work and the cost of the same, receipts of license fees, and disbursements of the Department of Transportation, and such other data as may be of interest in connection with the work of the Department of Transportation. A full account of each road project shall be kept by and under the direction of the Department of Transportation or its representatives, to ascertain at any time the expenditures and the liabilities against all projects; also records of contracts and force account work. The account records, together with all supporting documents, shall be open at all times to the inspection of the Governor or road authorities of any county, or their authorized representatives, and copies thereof shall be furnished such officials upon request.

(a1) The Department of Transportation shall report quarterly beginning on October 15, 1996, and then on the fifteenth of the month following the end of the fiscal quarter, to the Joint Legislative Transportation Oversight Committee on all projects to be built with funds obligated using the cash flow provisions of G.S. 143-28.1. The report shall contain a list of the projects and the amount obligated in anticipation of revenues for each year of the project.

(b) At least 30 days before it approves a Transportation Improvement Program in accordance with G.S. 143B-350(f)(4) or approves interim changes to a Transportation Improvement Program, the Department shall submit the proposed Transportation Improvement Program or proposed interim changes to a Transportation Improvement Program to the following members and staff of the General Assembly:

(1) The Speaker and the Speaker Pro Tempore of the House of Representatives;
(2) The Lieutenant Governor and the President Pro Tempore of the Senate;
(3) The Chairs of the House and Senate Appropriations Committees;
(4) Each member of the Joint Legislative Transportation Oversight Committee; and
(5) The Fiscal Research Division of the Legislative Services Commission. (1921, c. 2, s. 23; C.S., s. 3846(l); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1989, c. 692, s. 1.3; c. 770, s. 74.16; 1993, c. 321, s. 169.2(d); 1996, 2nd Ex. Sess., c. 18, s. 19.4(c).)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.2 provides: "Before approving the purchase of an aircraft from the Equipment Fund or a ferry in a Transportation Improvement Program, the Board of Transportation shall prepare an estimate of the operational costs and capital costs associated with the addition of the aircraft or ferry and shall report those additional costs to the General Assembly pursuant to G.S. 136-12(b), and to the Joint Legislative Commission on Governmental Operations."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.10 provides that the Departments of Transportation and Correction shall report, quarterly beginning October 1, 1994, to the Joint Legislative Transportation Oversight Committee on the implementation of the recommendations of the Inmate Labor Subcommittee.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1996, Second Extra Session, c. 18, s. 19.4(c) was codified as subsection (a1) of this section at the direction of the Revisor of Statutes.

Session Laws 1993, c. 561, s. 68, as amended by Session Laws 1995, c. 324, s.

18.28, and Session Laws 1996, Second Extra Session, c. 18, s. 19.6, provides for an appropriation to theDepartment of Transportation for the replacement of the wooded trestle over the Newport River on the Beaufort and Morehead Railroad with a concrete trestle, that construction shall be owned by the Department of Transportation, that the Department of Transportation may award a contract for the project in the 1996-2002 Transportation Improvement Program on a design-build basis, and that the Department of Transportation shall file a progress report every six months beginning on December 1, 1996, with the Joint Legislative Transportation Oversight Committee on the construction of the project.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

§ 136-13. Malfeasance of officers and employees of Department of Transportation, members of Board of Transportation, contractors, and others.

Editor's Note. — Session Laws 1993, c. 539, s. 1308, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-14. Members not eligible for other employment with Department; no sales to Department by employees; members not to sell or trade property with Department; profiting from official position.

Editor's Note. — Session Laws 1993, c. 539, s. 1309, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-16.6. Continuing rail appropriations.

(a) There is annually credited to the Highway Fund one hundred percent (100%) of the annual dividends received by the State from its ownership of stock in the North Carolina Railroad Company for use by the Department of Transportation for railroad purposes.

(b) The Department of Transportation shall include in its annual budget the purposes for which the annual dividends received by the State from its ownership of stock in the North Carolina Railroad Company will be used.

These purposes may include the following project types to be included in the annual Transportation Improvement Program:

(1) Track and signal improvements for passenger service.
(2) Rail passenger stations and multimodal transportation centers.
(3) Grade crossing protection, elimination, and hazard removal.
(4) Rail rolling stock cars and locomotives.
(5) Rail rehabilitation.
(6) Industrial rail access.

The Department of Transportation shall use these funds to supplement but not supplant funds allocated for projects approved as part of the Transportation Improvement Program.

(c) There is annually appropriated to the Department of Transportation for railroad purposes, including capital contributions to the Beaufort and Morehead Railroad Company or any successor company, one hundred percent (100%) of the funds credited to the Highway Fund pursuant to subsection (a) of this section. (1987, c. 738, s. 170(a), (c); 1989, c. 500, s. 53; 1991, c. 689, s. 65; 1995, c. 324, s. 18.2; 1996, 2nd Ex. Sess., c. 18, s. 19.12; 1997-443, s. 32.30(f).)

Editor's Note. — Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 32.30(a)-(e), provides that the General Assembly finds it advantageous for the State to acquire the outstanding shares of the North Carolina Railroad Company not held by the State, provides for $61,000,000 to be placed in a Railroad Reserve Account, and that if a majority of the outstanding shares held by shareholders other than the State are represented at a meeting where a plan for merger between the Beaufort and Morehead Railroad Company and the North Carolina Railroad Company is approved, the State shall invest that money on a one-time basis in obligations of the Beaufort and Morehead Railroad Company or its successor, and that the Director of the Budget shall recommend to the 1999 General Assembly a plan for the repayment of that loan. Furthermore, no stock owned by the State of North Carolina in the North Carolina Railroad Company shall be sold or transferred except with prior consent as part of a transaction relating to a plan of merger or consolidation of that company with another company; in accordance with this provision, the State Treasurer shall transfer the stock owned by the State of North Carolina to the Beaufort and Morehead Railroad Company.

Session Laws 1997-443, s. 32.30(g) provides that subsection (f), which amended this section, applies to funds previously appropriated under subsection (c).

Session Laws 1997-443, s. 32.30(h)-(i), provide that no monies appropriated for highway construction or maintenance may be used by the State or any of its political subdivisions to acquire stock in the North Carolina Railroad Company or make a capital contribution or loan to that company or the Beaufort and Morehead Railroad Company. Investments by the State in the Beaufort and Morehead Railroad Company or any successor company shall be recorded in the General Fund.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, in subsection (a) substituted "credited to the Highway Fund" for "appropriated," deleted "in the prior fiscal year" preceding "by the State," and deleted "to the Highway Fund" following "North Carolina Railroad Company"; and added subsection (c).

The 1997 amendment, effective July 1, 1997, inserted "including capital contributions to the Beaufort and Morehead Railroad Company or any successor company" in subsection (c).

§ 136-16.10. Allocations by Department Controller to eliminate overdrafts.

The Controller of the Department of Transportation shall allocate at the beginning of each fiscal year from the various appropriations made to the Department of Transportation for State Construction, State Funds to Match Federal Highway Aid, State Maintenance, and Ferry Operations, sufficient funds to eliminate all overdrafts on State maintenance and construction projects, and these allocations shall not be diverted to other purposes. (1997-443, s. 32.3.)

Editor's Note. — Session Laws 1997-443, s. 35.5, made this section effective July 1, 1997.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

ARTICLE 2.

Powers and Duties of Department and Board of Transportation.

§ 136-17.2. Members of the Board of Transportation represent entire State.

Local Modification. — Village of Bald Head Island: 1997-324, s.1.

§ 136-18. Powers of Department of Transportation.

The said Department of Transportation shall be vested with the following powers:

(1) The general supervision over all matters relating to the construction of the State highways, letting of contracts therefor, and the selection of materials to be used in the construction of State highways under the authority of this Chapter.

(2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights-of-way for any new roads that may be necessary for a State highway system, and subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire such additional rights-of-way as may be necessary for the present or future relocation or initial location, above or below ground, of telephone, telegraph, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the

General Statutes, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the Department of Transportation may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State highway system and adjacent utility rights-of-way: Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of G.S. 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this Chapter shall be construed to authorize or permit the Department of Transportation to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Department of Transportation.

(3) To provide for such road materials as may be necessary to carry on the work of the Department of Transportation, either by gift, purchase, or condemnation: Provided, that when any person, firm or corporation owning a deposit of sand, gravel or other material, necessary, for the construction of the system of State highways provided herein, has entered into a contract to furnish the Department of Transportation any of such material, at a price to be fixed by said Department of Transportation, thereafter the Department of Transportation shall have the right to condemn the necessary right-of-way under the provisions of Article 9 of Chapter 136, to connect said deposit with any part of the system of State highways or public carrier, provided that easements to material deposits, condemned under this Article shall not become a public road and the condemned easement shall be returned to the owner as soon as the deposits are exhausted or abandoned by the Department of Transportation.

(4) To enforce by mandamus or other proper legal remedies all legal rights or causes of action of the Department of Transportation with other public bodies, corporations, or persons.

(5) To make rules, regulations and ordinances for the use of, and to police traffic on, the State highways, and to prevent their abuse by individuals, corporations and public corporations, by trucks, tractors, trailers or other heavy or destructive vehicles or machinery, or by any other means whatsoever, and to provide ample means for the enforcement of same; and the violation of any of the rules, regulations or ordinances so prescribed by the Department of Transportation shall constitute a Class 1 misdemeanor: Provided, no rules, regulations or ordinances shall be made that will conflict with any statute now in force or any ordinance of incorporated cities or towns, except the De-

partment of Transportation may regulate parking upon any street which forms a link in the State highway system, if said street be maintained with State highway funds.

(6) To establish a traffic census to secure information about the relative use, cost, value, importance, and necessity of roads forming a part of the State highway system, which information shall be a part of the public records of the State, and upon which information the Department of Transportation shall, after due deliberation and in accordance with these established facts, proceed to order the construction of the particular highway or highways.

(7) To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities, forming a part of the State highway system from date of acquiring said roads. The Department of Transportation shall have authority to maintain all streets constructed by the Department of Transportation in towns of less than 3,000 population by the last census, and such other streets as may be constructed in towns and cities at the expense of the Department of Transportation, whenever in the opinion of the Department of Transportation it is necessary and proper so to do.

(8) To give suitable names to State highways and change the names as determined by the Board of Transportation of any highways that shall become a part of the State system of highways.

(9) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of those objectives. None of the roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes except (i) for materials displayed in welcome centers in accordance with G.S. 136-89.56, and (ii) for vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Health and Human Services, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. Every other use or attempted use of any of these areas for commercial purposes shall constitute a Class 1 misdemeanor and each day's use shall constitute a separate offense.

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, signboards, fences, gas, water, sewerage, oil, or other pipe-

lines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other lines, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor.

(11) To regulate, abandon and close to use, grade crossings on any road designated as part of the State highway system, and whenever a public highway has been designated as part of the State highway system and the Department of Transportation, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the Department of Transportation shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the Department of Transportation shall have power to close to use and abandon such grade crossing and any other crossing adjacent thereto.

(12) The Department of Transportation shall have such powers as are necessary to comply fully with the provisions of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991), as amended, and all other federal aid acts and programs the Department is authorized to administer. The said Department of Transportation is hereby authorized to enter into all contracts and agreements with the United States government relating to survey, construction, improvement and maintenance of roads, urban area traffic operations studies and improvement projects on the streets on the State highway system and on the municipal system in urban areas, under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the Secretary of Transportation or otherwise provided by federal acts, and to do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future aid acts of Congress for the construction or improvement and maintenance of federal aid of State highways. The good faith and credit of the State are further hereby pledged to make available funds necessary to meet the requirements of the acts of Congress, present or future, appropriating money to construct and improve rural post roads and apportioned to this State during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the roads constructed or improved with the aid of funds so appropri-

ated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the State are further pledged to maintain such roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out such maintenance. Upon request of the Department of Transportation and in order to enable it to meet the requirements of acts of Congress with respect to federal aid funds apportioned to the State of North Carolina, the State Treasurer is hereby authorized, with the approval of the Governor and Council of State, to issue short term notes from time to time, and in anticipation of State highway revenue, and to be payable out of State highway revenue for such sums as may be necessary to enable the Department of Transportation to meet the requirements of said federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars ($2,000,000).

(12a) The Department of Transportation shall have such powers as are necessary to establish, administer, and receive federal funds for a transportation infrastructure banking program as authorized by the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, as amended, and the National Highway System Designation Act of 1995, Pub. L. 104-59, as amended. The Department of Transportation is authorized to apply for, receive, administer, and comply with all conditions and requirements related to federal financial assistance necessary to fund the infrastructure banking program. The infrastructure banking program established by the Department of Transportation may utilize federal and available State funds for the purpose of providing loans or other financial assistance to governmental units, including toll authorities, to finance the costs of transportation projects authorized by the above federal aid acts. Such loans or other financial assistance shall be subject to repayment and conditioned upon the establishment of such security and the payment of such fees and interest rates as the Department of Transportation may deem necessary. The Department of Transportation is authorized to apply a municipality's share of funds allocated under G.S. 136-41.1 or G.S. 136-44.20 as necessary to ensure repayment of funds advanced under the infrastructure banking program. The Department of Transportation shall establish jointly, with the State Treasurer, a separate infrastructure banking account with necessary fiscal controls and accounting procedures. Funds credited to this account shall not revert, and interest and other investment income shall accrue to the account and may be used to provide loans and other financial assistance as provided under this subdivision. The Department of Transportation may establish such rules and policies as are necessary to establish and administer the infrastructure banking program. The infrastructure banking program authorized under this subdivision shall not modify the regional distribution formula for the distribution of funds established by G.S. 136-17.2A. Governmental units may apply for loans and execute debt instruments payable to the State in order to obtain loans or other financial assistance provided for in this subdivision. The Department of Transportation shall require that applicants shall pledge as security for such obligations revenues derived from operation of the benefited facilities or systems, other sources of revenue, or their faith and credit, or any combination thereof. The faith and credit of such governmental units shall not be pledged or be deemed to have been pledged unless the requirements of Article 4, Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this subdivision. The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments to the State without any public bidding therefor. The Local Government Commission shall review and approve proposed loans to applicants pursuant to this subdivision under the provisions of Articles 4 and 5, Chapter 159 of the General Statutes, as if the issuance of bonds was proposed, so far as those provisions are applicable. Loans authorized by this subdivision shall be outstanding debt for the purpose of Article 10, Chapter 159 of the General Statutes.

(13) The Department of Transportation may construct and maintain all walkways and driveways within the Mansion Square in the City of Raleigh and the Western Residence of the Governor in the City of Asheville including the approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance.

(14) The Department of Transportation shall have authority to provide roads for the connection of airports in the State with the public highway system, and to mark the highways and erect signals along the same for the guidance and protection of aircraft.

(15) The Department of Transportation shall have authority to provide facilities for the use of waterborne traffic by establishing connections between the highway system and the navigable waters of the State by means of connecting roads and piers.

(16) The Department of Transportation, pursuant to a resolution of the Board of Transportation, shall have authority, under the power of eminent domain and under the same procedure as provided for the acquirement of rights-of-way, to acquire title in fee simple to parcels of land for the purpose of exchanging the same for other real property to be used for the establishment of rights-of-way or for the widening of existing rights-of-way or the clearing of obstructions that, in the opinion of the Department of Transportation, constitute dangerous hazards at intersections. Real property may be acquired for such purposes only when the owner of the property needed by the Department of Transportation has agreed in writing to accept the property so acquired in exchange for that to be used by the Department of Transportation, and when, in the opinion of the Department of Transportation, an economy in the expendi-

ture of public funds and the improvement and convenience and safety of the highway can be effected thereby.

(17) The Department of Transportation is hereby authorized and required to maintain and keep in repair, sufficient to accommodate the public school buses, roads leading from the state-maintained public roads to all public schools and public school buildings to which children are transported on public school buses to and from their homes. Said Department of Transportation is further authorized to construct, pave, and maintain school bus driveways and sufficient parking facilities for the school buses at those schools. The Department of Transportation is further authorized to construct, pave, and maintain all other driveways and entrances to the public schools leading from public roads not required in the preceding portion of this subdivision.

(18) To cooperate with appropriate agencies of the United States in acquiring rights-of-way for and in the construction and maintenance of flight strips or emergency landing fields for aircraft adjacent to State highways.

(19) To prohibit the erection of any informational, regulatory, or warning signs within the right-of-way of any highway project built within the corporate limits of any municipality in the State where the funds for such construction are derived in whole or in part from federal appropriations expended by the Department of Transportation, unless such signs have first been approved by the Department of Transportation.

(20) The Department of Transportation is hereby authorized to maintain and keep in repair a suitable way of ingress and egress to all public or church cemeteries or burial grounds in the State notwithstanding the fact that said road is not a part of the state-maintained system of roads. For the purpose of this subdivision a public or church cemetery or burial ground shall be defined as a cemetery or burial ground in which there are buried or permitted to be buried deceased persons of the community in which said cemetery or burial ground is located, but shall not mean a privately owned cemetery operated for profit or family burial plots.

(21) The Department of Transportation is hereby authorized and directed to remove all dead animals from the traveled portion and rights-of-way of all primary and secondary roads and to dispose of such animals by burial or otherwise. In cases where there is evidence of ownership upon the body of any dead dog, the Department of Transportation shall take reasonable steps to notify the owner thereof by mail or other means.

(22) No airport or aircraft landing area shall be constructed or altered where such construction or alteration when undertaken or completed may reasonably affect motor vehicle operation and safety on adjoining public roads except in accordance with a written permit from the Department of Transportation or its duly authorized officers. The Department of Transportation is authorized and empowered to regulate airport and aircraft landing area construction and alteration in order to preserve safe clearances between

highways and airways and the Department of Transportation is authorized and empowered to make rules, regulations, and ordinances for the preservation of safe clearances between highways and airways. The Department of Transportation shall be responsible for determining safe clearances and shall fix standards for said determination which shall not exceed the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal Aid Highway Act of 1958. Any person, firm, corporation or airport authority constructing or altering an airport or aircraft landing area without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or violating the provisions of the rules, regulations or ordinances promulgated under the authority of this section shall be guilty of a Class 1 misdemeanor; provided, that this subdivision shall not apply to publicly owned and operated airports and aircraft landing areas receiving federal funds and subject to regulation by the Federal Aviation Authority.

(23) When in the opinion of the Department of Transportation an economy in the expenditure of public funds can be effected thereby, the Department of Transportation shall have authority to enter into agreements with adjoining states regarding the planning, location, engineering, right-of-way acquisition and construction of roads and bridges connecting the North Carolina State highway system with public roads in adjoining states, and the Department of Transportation shall have authority to do planning, surveying, locating, engineering, right-of-way acquisition and construction on short segments of roads and bridges in adjoining states with the cost of said work to be reimbursed by the adjoining state, and may also enter into agreements with adjoining states providing for the performance of and reimbursement to the adjoining state of the cost of such work done within the State of North Carolina by the adjoining state: Provided, that the Department of Transportation shall retain the right to approve any contract for work to be done in this State by an adjoining state for which the adjoining state is to be reimbursed.

(24) The Department of Transportation is further authorized to pave driveways leading from state-maintained roads to rural fire district firehouses which are approved by the North Carolina Fire Insurance Rating Bureau and to facilities of rescue squads furnishing ambulance services which are approved by the North Carolina State Association of Rescue Squads, Inc.

(25) The Department of Transportation is hereby authorized and directed to design, construct, repair, and maintain paved streets and roads upon the campus of each of the State's institutions of higher education, at state-owned hospitals for the treatment of tuberculosis, state-owned orthopedic hospitals, juvenile correction centers, mental health hospitals and retarded centers, schools for the deaf, and schools for the blind, when such construction, maintenance, or repairs have been authorized by the General Assembly in the appropriations bills enacted by the Gen-

eral Assembly. Cost for such construction, maintenance, and repairs shall be borne by the Highway Fund. Upon the General Assembly authorizing the construction, repair, or maintenance of a paved road or drive upon any of the above-mentioned institutions, the Department of Transportation shall give such project priority to insure that it shall be accomplished as soon as feasible, at the minimum cost to the State, and in any event during the biennium for which the authorization shall have been given by the General Assembly.

(26) The Department of Transportation, at the request of a representative from a board of county commissioners, is hereby authorized to acquire by condemnation new or additional right-of-way to construct, pave or otherwise improve a designated State-maintained secondary road upon presentation by said board to the Department of Transportation of a duly verified copy of the minutes of its meeting showing approval of such request by a majority of its members and by the further presentation of a petition requesting such improvement executed by the abutting owners whose frontage on said secondary road shall equal or exceed seventy-five percent (75%) of the linear front footage along the secondary road sought to be improved. This subdivision shall not be construed to limit the authority of the Department of Transportation to exercise the power of eminent domain.

(27) The Department of Transportation is authorized to establish policies and promulgate rules providing for voluntary property owner or highway user participation in the costs of maintenance or improvement of roads which would not otherwise be necessary or would not otherwise be performed by the Department of Transportation and which will result in a benefit to the property owner or highway user. By way of illustration and not as a limitation, such costs include those incurred in connection with drainage improvements or maintenance, driveway connections, dust control on unpaved roads, surfacing or paving of roads and the acquisition of rights-of-way. Property owner and highway user participation can be in the form of materials, money, or land (for right-of-way) as deemed appropriate by the Department of Transportation. The authority of this section shall not be used to authorize, construct or maintain toll roads or bridges.

(28) The Department of Transportation may obtain land, either by gift, lease or purchase which shall be used for the construction and maintenance of ridesharing parking lots. The Department may design, construct, repair, and maintain ridesharing parking facilities.

(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage lanes and medians by others for the driveway connections into any United States

route, or North Carolina route, and on any secondary road route with an average daily traffic volume of 4,000 vehicles per day or more.

(30) Consistent with G.S. 130A-309.14(a1), the Department of Transportation shall review and revise its bid procedures and specifications set forth in Chapter 136 of the General Statutes to encourage the purchase or use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The Department of Transportation shall require the purchase or use of such supplies and products in the construction and maintenance of highways and bridges to the extent that the use is practicable and cost-effective. The Department shall prepare an annual report on October 1 of each year to the Environmental Review Commission as required under G.S. 130A-309.14(a1).

(31) The Department of Transportation is authorized to designate portions of highways as scenic highways, and combinations of portions of highways as scenic byways, for portions of those highways that possess unusual, exceptional, or distinctive scenic, recreational, historical, educational, scientific, geological, natural, wildlife, cultural or ethnic features. The Department shall remove, upon application, from any existing or future scenic highway or scenic byway designation, highway sections that:

a. Have no scenic value,
b. Have been designated or would be so designated solely to preserve system continuity, and
c. Are adjacent to property on which is located one or more permanent structures devoted to a commercial or industrial activity and on which a commercial or industrial activity is actually conducted, in an unzoned area or an area zoned commercial or industrial pursuant to a State or local zoning ordinance or regulation, except for commercial activity related to tourism or recreation.

The Department shall adopt rules and regulations setting forth the criteria and procedures for the designation of scenic highways and scenic byways under this subsection.

Those portions of highways designated as scenic by the Department prior to July 1, 1993, are considered to be designated as scenic highways and scenic byways under this subsection but the Department shall remove from this designation portions of those highway sections that meet the criteria set forth in this subsection, if requested.

(32) The Department of Transportation may perform dredging services, on a cost reimbursement basis, for a unit of local government if the unit cannot obtain the services from a private company at a reasonable cost. A unit of local government is considered to be unable to obtain dredging services at a reasonable cost if it solicits bids for the dredging services in accordance with Article 8 of Chapter 143 of the General Statutes and does not receive a bid, considered by the Department of Transportation Engineering Staff, to be reasonable.

(33) The Department of Transportation is empowered and directed, from time to time, to carefully examine into and

inspect the condition of each railroad, its equipment and facilities, in regard to the safety and convenience of the public and the railroad employees. If the Department finds any equipment or facilities to be unsafe, it shall at once notify the railroad company and require the company to repair the equipment or facilities.

(34) The Department of Transportation may conduct, in a manner consistent with federal law, a program of accident prevention and public safety covering all railroads and may investigate the cause of any railroad accident. In order to facilitate this program, any railroad involved in an accident that must be reported to the Federal Railroad Administration shall also notify the Department of Transportation of the occurrence of the accident. (1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C.S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, c. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155; 1965, c. 879, s. 1; 1967, c. 1129; 1969, c. 794, s. 2; 1971, cc. 289, 291, 292, 977; 1973, c. 507, s. 5; 1977, c. 460, ss. 1, 2; c. 464, ss. 7.1, 14, 42; 1981, c. 682, s. 19; 1983, c. 84; c. 102; 1985, c. 718, ss. 1, 6; 1987, c. 311; c. 417, ss. 1, 2; 1989, c. 158; 1989 (Reg. Sess. 1990), c. 962, s. 1; 1993, c. 197, s. 2; c. 488, s. 1; c. 524, s. 4; c. 539, ss. 974-977; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 247, s. 1; c. 507, s. 18.2; 1995 (Reg. Sess., 1996), c. 673, s. 4; 1996, 2nd Ex. Sess., c. 18, s. 19.10(a); 1997-428, s. 1; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1993, c. 539, ss. 974-977, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability cause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1995 (Reg. Sess., 1996), c. 673, s. 1, provides: "The statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, of the Rail Safety Section of the Transportation Division of the North Carolina Utilities Commission, is transferred to the Department of Transportation."

Session Laws 1995 (Reg. Sess., 1996), c. 673, s. 6, provides: "The Secretary of Transportation shall study the provision of rail safety inspection services in North Carolina by the State and the Federal Railroad Administration and shall recommend to the General Assembly no later than June 1, 1997, whether the State should continue to perform this service. The recommendation shall be contained in a report filed with the President Pro Tempore of the Senate and the Speaker of the House of Representatives."

Session Laws 1995 (Reg. Sess., 1996), c. 673, s. 7, provides: "The Department of Transportation shall implement this act within available funds."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 634, s. 4, effective July 1, 1996, added subdivisions (33) and (34).

Session Laws 1996, Second Extra Session, c. 18, s. 19.10(a), effective July 1, 1996, inserted "(i) for materials displayed in welcome centers in accordance with G.S. 136-89.56, and (ii)" in subdivision (9).

Session Laws 1997-428, s. 1, effective August 22, 1997, added subdivision (12a).

Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

CASE NOTES

I. General Consideration.
II. Power of Eminent Domain.

I. GENERAL CONSIDERATION.

Pedestrian Member of Protected Class. — Plaintiff, as a pedestrian lawfully and properly using a telephone booth, was a member of the Class A regulation prohibiting installation of phone booths in rights-of-way was intended to protect. Baldwin v. GTE S., Inc., 335 N.C. 544, 439 S.E.2d 108 (1994).

Violation of Administrative Regulation Is Negligence Per Se. — When the violation of an administrative regulation enacted for safety purposes is criminal (subsection (10)), that violation is negligence per se in a civil trial unless otherwise provided. Baldwin v. GTE S., Inc., 335 N.C. 544, 439 S.E.2d 108 (1994).

Cited in DOT v. Overton, 111 N.C. App. 857, 433 S.E.2d 471 (1993).

II. POWER OF EMINENT DOMAIN.

The obstruction of view of plaintiff's billboards due to the vegetation and trees planted by Department of Transporation (DOT) as part of the highway beautification project did not amount to a taking of plaintiff's property. Adams Outdoor Adv. v. North Carolina DOT, 112 N.C. App. 120, 434 S.E.2d 666 (1993).

§ 136-18.2. Seed planted by Department of Transportation to be approved by Department of Agriculture and Consumer Services.

The Department of Transportation shall not cause any seed to be planted on or along any highway or road right-of-way unless and until such seed has been approved by the Department of Agriculture and Consumer Services as provided for in the rules and regulations of the Department of Agriculture and Consumer Services for such seed. (1957, c. 1002; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1997-261, s. 88.)

Effect of Amendments. — Session Laws 1997-261, ss. 88 and 109, effective July 1, 1997, deleted "State" following "approved by the", added "and Consumer Services" to the catchline, and twice inserted "and Consumer Services" following "Department of Agriculture".

§ 136-18.4. Provision and marking of "pull-off" areas.

Editor's Note. — Session Laws 1993, c. 539, s. 978, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings; federal parkways.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Rights Afforded by Former Version of this Section. — In enacting this section, the legislature has implicitly waived the Department of Transportation's sovereign immunity to the extent of the rights afforded in the former version of this section. Ferrell v. DOT, 334 N.C. 650, 435 S.E.2d 309 (1993).

§ 136-20. Elimination or safeguarding of grade crossings and inadequate underpasses or overpasses.

(a) Whenever any road or street forming a link in or a part of the State highway system, whether under construction or heretofore or hereafter constructed, shall cross or intersect any railroad at the same level or grade, or by an underpass or overpass, and in the opinion of the Secretary of Transportation such crossing is dangerous to the traveling public, or unreasonably interferes with or impedes traffic on said State highway, the Department of Transportation shall issue notice requiring the person or company operating such railroad to appear before the Secretary of Transportation, at his office in Raleigh, upon a day named, which shall not be less than 10 days or more than 20 days from the date of said notice, and show cause, if any it has, why such railroad company shall not be required to alter such crossing in such way as to remove such dangerous condition and to make such changes and improvements thereat as will safeguard and secure the safety and convenience of the traveling public thereafter. Such notice shall be served on such railroad company as is now provided by law for the service of summons on domestic corporations, and officers serving such notice shall receive the same fees as now provided by law for the service of such summons.

(b) Upon the day named, the Secretary of Transportation shall hear said matter and shall determine whether such crossing is dangerous to public safety, or unreasonably interferes with traffic thereon. If he shall determine that said crossing is, or upon the completion of such highway will be, dangerous to public safety and its elimination or safeguarding is necessary for the proper protection of the traffic on said State highway, the Secretary of Transportation shall thereupon order the construction of an adequate underpass or overpass at said crossing or he may in his discretion order said railroad company to install and maintain gates, alarm signals or other approved safety devices if and when in the opinion of said Secretary of Transportation upon the hearing as aforesaid the public safety and convenience will be secured thereby. And said order shall specify that the cost of construction of such underpass or overpass or the installation of such safety device shall be allocated between the railroad company and the Department of Transportation in the same ratio as the net benefits received by such railroad company from the project bear to the net benefits accruing to the public using the highway, and in no case shall the net benefit to any railroad company or companies be deemed to be more than ten percent (10%) of the total benefits resulting from the project. The Secretary of Transportation shall be responsible for determining the proportion of the benefits derived by the railroad company from the project, and shall fix standards for the determining of said benefits which shall be consistent with the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal-Aid Highway Act of 1944.

(c) Upon the filing and issuance of the order as hereinbefore provided for requiring the construction of any underpass or overpass or the installation and maintenance of gates, alarm signals or other safety devices at any crossing upon the State highway system, it shall be the duty of the railroad company operating the railroad with which said public road or street intersects or crosses to construct such underpass or overpass or to install and maintain such safety device as may be required in said order. The work may be done and material furnished either by the railroad company or the Department of Transportation, as may be agreed upon, and the cost thereof shall be allocated and borne as set out in subsection (b) hereof. If the work is done and material furnished by the railroad company, an itemized statement of the total amount expended therefor shall, at the completion of the work, be furnished the Department of Transportation, and the Department of Transportation shall pay such amount to the railroad company as may be shown on such statement after deducting the amount for which the railroad company is responsible; and if the work is done by the Department of Transportation, an itemized statement of the total amount expended shall be furnished to the railroad company, and the railroad company shall pay to the Department of Transportation such part thereof as the railroad company may be responsible for as herein provided; such payment by the railroad company shall be under such rules and regulations and by such methods as the Department of Transportation may provide.

(d) Within 60 days after the issuance of the order for construction of an underpass or overpass or the installation of other safety devices as herein provided for, the railroad company against which such order is issued shall submit to the Department of Transportation plans for such construction or installation, and within 10 days thereafter said Department of Transportation, through its chairman of the Department of Transportation, shall notify such railroad company of its approval of said plan or of such changes and amendments thereto as to it shall seem advisable. If such plans are not submitted to the Department of Transportation by said railroad company within 60 days as aforesaid, the chairman of the Department of Transportation shall have plans prepared and submit them to the railroad company. The railroad company shall within 10 days notify the chairman of the Department of Transportation of its approval of the said plans or shall have the right within such 10 days to suggest such changes and amendments in the plans so submitted by the chairman of the Department of Transportation as to it shall seem advisable. The plans so prepared and finally approved by the chairman of the Department of Transportation shall have the same force and effect, and said railroad company shall be charged with like liability, and said underpass or overpass shall be constructed or such safety device installed in accordance therewith, as if said plans had been originally prepared and submitted by said railroad company. If said railroad company shall fail or neglect to begin or complete the construction of said underpass or overpass, or the installation of such safety device, as required by the order of the Secretary of Transportation, said Secretary of Transportation is authorized and directed to prepare the necessary plans therefor, which plans shall have the same force and effect, and shall fix said railroad company with like liability, as if said plans had been originally prepared and submitted by said railroad company, and the Department of Transportation shall proceed to construct said underpass or overpass or install such safety device in accordance therewith. An accurate account of the cost of said construction or installation shall be kept by the Department of Transportation and upon the completion of such work a statement of that portion thereof chargeable to such railroad company as set out in the order of the Department of Transportation shall be rendered said railroad company. Upon the failure or refusal of said company to pay the bill so rendered, the Department of Transportation shall recover the amount thereof by suit therefor against said company in the Superior Court of Wake County: Provided, that the payment by such railroad company of said proportionate part may be made under such rules and regulations and by such methods as the Department of Transportation may provide. If the Department of Transportation shall undertake to do the work, it shall not obstruct or impair the operation of the railroad and shall keep the roadbed and track safe for the operation of trains at every stage of work. If said railroad company shall construct such underpass or overpass or shall install such safety devices in accordance with the order of the Secretary of Transportation, the proportionate share of the cost thereof as set out in subsection (b) hereof shall upon the completion of said work be paid to the railroad company by the Department of Transportation. The Department of Transportation may inspect and check the expenditures for such construction or installation so made by the railroad company and an accurate account of the cost thereof shall upon the completion of said work be submitted to the Department of Transportation by the railroad company. If the Department of Transportation shall neglect or refuse to pay that portion of the cost of said construction or installation chargeable to it, the railroad company shall recover the amount thereof by suit therefor against the Department of Transportation in the Superior Court of Wake County.

(e) If any railroad company so ordered by the Secretary of Transportation to construct an underpass or overpass or to install safety devices at grade crossings as hereinbefore provided for shall fail or refuse to comply with the order of the Secretary of Transportation requiring such construction or installation, said railroad company shall be guilty of a Class 3 misdemeanor and shall only be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00) in the discretion of the court for each day such failure or refusal shall continue, each said day to constitute a separate offense.

(f) The jurisdiction over and control of said grade crossings and safety devices upon the State highway system herein given the Department of Transportation shall be exclusive.

(g) From any order or decision so made by the Secretary of Transportation the railroad company may appeal to the superior court of the county wherein is located the crossing affected by said order. Such appeal shall not defer or delay the construction of such underpass or overpass or the installation of such safety device as required by the order of the Secretary of Transportation, but the railroad company shall proceed to comply with such order in accordance with his terms. The action of the railroad company in complying with and carrying out such order pending said appeal shall not prejudice or affect the right or remedies of such railroad company on such appeal. Upon such appeal the court shall determine only whether the order of the Secretary of Transportation for such construction or installation is unreasonable and unnecessary for the protection of the traveling public and the apportionment of the cost to the extent hereinafter provided in this subsection, and if upon the hearing of said appeal it shall be determined that said order was unnecessary for the protection of the traveling public, the Department of Transportation shall bear the total cost of the construction of such underpass or overpass or the installation of such safety device. In the event the decision on appeal should be that the construction or installation was necessary but the cost or apportionment thereof unreasonable, then the railroad company shall bear its proportion as provided in this section of such cost as may be determined on appeal to have been reasonable to meet the necessity of the case. Upon said appeal from an order of the Secretary of Transportation, the burden of proof shall be upon the railroad company, and if it shall not be found and determined upon said appeal that said order was unreasonable or unnecessary for the protection of the traveling public at said crossing, then such railroad company shall bear its proportion of the cost of such construction or installation in accordance with this section.

(h) The Department of Transportation shall pay the cost of maintenance of all overpasses and the railroad company shall pay the cost of maintenance of all underpasses constructed in accordance with this section. The cost of maintenance of safety devices at all intersections of any railroad company and any street or road forming a link in or a part of the State highway system which have been constructed prior to July 1, 1959, or which shall be constructed thereafter shall be borne fifty percent (50%) by the railroad company and fifty percent (50%) by the Department of Transportation. The maintenance of said overpasses and underpasses shall be performed by the railroad company or the Department of Transportation as may be agreed upon and reimbursement for the cost thereof, in accordance with this section, shall be made annually. The maintenance of such safety devices shall be performed by the railroad company and reimbursement for the cost thereof, in accordance with this section, shall be made annually by the Department of Transportation. (1921, c. 2, s. 19; 1923, c. 160, s. 5; C.S., s. 3846(y); 1925, c. 277; 1929, c. 74; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1959, c. 1216; 1973, c. 507, s. 5; 1977, c. 464, ss. 7.1, 11, 15; 1993, c. 539, s. 979; 1994, Ex. Sess., c. 14, s. 60; c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 979, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 60, which amended this section, was effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date.

§ 136-20.1. To require installation and maintenance of block system and safety devices; automatic signals at railroad intersections.

(a) The Department of Transportation is empowered and directed to require any railroad company to install and put in operation and maintain upon the whole or any part of its road a block system of telegraphy or any other reasonable safety device, but no railroad company shall be required to install a block system upon any part of its road unless at least eight trains each way per day are operated on that part.

(b) The Department of Transportation is empowered and directed to require, when public safety demands, where two or more railroads cross each other at a common grade, or any railroad crosses any stream or harbor by means of a bridge, to install and maintain such a system of interlocking or automatic signals as will render it safe for engines and trains to pass over such crossings or bridge without stopping, and to apportion the cost of installation and maintenance between said railroads as may be just and proper. (1907, c. 469, s. 1b; 1911, c. 197, s. 2; Ex. Sess. 1913, c. 63, s. 1; C.S., ss. 1047, 1049; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1; 1995 (Reg. Sess., 1996), c. 673, s. 5.)

Editor's Note. — This section was formerly numbered 62-236. It was recodified as § 136-20.1 by Session Laws 1995 (Reg. Sess., 1996), c. 673, s. 5.

Session Laws 1995 (Reg. Sess., 1996), c. 673, s. 6, provides: "The Secretary of Transportation shall study the provision of rail safety inspection services in North Carolina by the State and the Federal Railroad Administration and shall recommend to the General Assembly no later than June 1, 1997, whether the State should continue to perform this service. The recommendation shall be contained in a report filed with the President Pro Tempore of the Senate and the Speaker of the House of Representatives."

Session Laws 1995, (Reg. Sess., 1996), c. 673, s. 7, provides: "The Department of Transportation shall implement this act within available funds."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, recodified former G.S. 62-236 as this section; and substituted "Department of Transportation" for "Commission" in subsections (a) and (b).

§ 136-21. Drainage of highway; application to court; summons; commissioners.

Whenever in the establishment, construction, improvement or maintenance of any public highway it shall be necessary to drain said highway, and to accomplish such purpose it becomes necessary to excavate a canal or canals for carrying the surplus water to some appropriate outlet, either along the right-of-way of said highway or across the lands of other landowners, and by the construction, enlargement or improvement of such canal or canals, lands other than said highway will be drained and benefited, then, and in such event, the Department of Transportation, if said highway be a part of the State highway system, or the county commissioners, if said road is not under State supervision, may, by petition, apply to the superior court of the county in which, in whole or in part, said highway lies or said canal is to be constructed, setting forth the necessity for the construction, improvement or maintenance of said canal, the lands which will be drained thereby, with such particularity as to enable same to be identified, the names of the owners of said land and the particular circumstances of the case; whereupon a summons shall be issued for and served upon each of the proprietors, requiring them to appear before the court at a time to be named in the summons, which shall not be less than 10 days from the service thereof, and upon such day the petition shall be heard, and the court shall appoint three disinterested persons, one of whom shall be a competent civil and drainage engineer recommended by the Department of Environment and Natural Resources, and the other two of whom shall be resident freeholders of the county or counties in which the road and lands are, in whole or in part, located, as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties. (1925, c. 85, s. 3; c. 122, s. 44; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; c. 1262, s. 86; 1977, c. 464, s. 7.1; c. 771, s. 4; 1989, c. 727, s. 218(88); 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 136-26. Closing of State highways during construction; injury to barriers, warning signs, etc.

Editor's Note. — Session Laws 1993, c. 539, s. 980, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or sewer corporations or associations.

The Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines, located within the existing State highway right-of-way, that are necessary to be relocated for a State highway improvement project and that are owned by: (i) a municipality with a population of 5,500 or less according to the latest decennial census; (ii) a nonprofit water or sewer association or corporation; (iii) any water or sewer system organized pursuant to Chapter 162A of the General Statutes; (iv) a rural water system operated by county as an enterprise system; (v) any sanitary district organized pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes; or (vi) constructed by a water or sewer system organized pursuant to Chapter 162A of the General Statutes and then sold or transferred to a municipality with a population of greater than 5,500 according to the latest decennial census. (1983 (Reg. Sess., 1984), c. 1090; 1985, c. 479, s. 186(a); 1985 (Reg. Sess., 1986), c. 1018, s. 11; 1993 (Reg. Sess., 1994), c. 736, s. 1; 1995, c. 33, s. 1; c. 266, s. 1.1.)

Editor's Note. —

Session Laws 1993, c. 561, s. 64 of which is noted under this section, in s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

OPINIONS OF ATTORNEY GENERAL

Qualification for Exemption. — On the date the Department of Transportation lets a contract for a highway improvement project, a water or sewer system organized pursuant to Chapter 162A must be in existence to qualify for an exemption from the requirement that water and sewer lines on state highway right of way be relocated at local expense. See opinion of Attorney General to Mr. William S. Richardson, — N.C.A.G. — (June 21, 1994).

The existence of a right of way encroachment agreement did not affect the application of the exemption as the specific exemption contained in this section supersedes any conflicting provision of the agreement and would not be enforceable. See opinion of Attorney General to Mr. William S. Richardson, — N.C.A.G. — (June 21, 1994).

§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

(a) All contracts over five hundred thousand dollars ($500,000) that the Department of Transportation may let for construction or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal-aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.131(a) for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. The Department of Transportation shall use only the contract provisions provided in the North Carolina Department of Transportation, Standard Specifications for Roads and Structures, January 1, 1984, except as each may be changed or provided for by rule adopted by the Board of Transportation in accordance with the Administrative Procedure Act.

(b) In those cases in which the amount of work to be let to contract for highway construction, maintenance, or repair is five hundred thousand dollars ($500,000) or less, at least three informal bids shall be solicited. The term "informal bids" is defined as bids in writing, received pursuant to a written request, without public advertising. All such contracts shall be awarded to the lowest responsible bidder. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time after the bids are opened.

(c) The construction, maintenance, and repair of ferryboats and all other marine floating equipment and the construction and repair of all types of docks by the Department of Transportation shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and Chapter 44A and Article 1 of Chapter 143, "The Executive Budget Act." In cases of a written determination by the Secretary of Transportation that the requirement for compatibility does not make public advertising feasible for the repair of ferryboats, the public advertising as well as the soliciting of informal bids may be waived.

(d) The construction, maintenance, and repair of the highway rest area buildings and facilities, weight stations and the Department of Transportation's participation in the construction of welcome center buildings shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and 136-28.3 and Article 1 of Chapter 143 of the General Statutes, "The Executive Budget Act."

(e) The Department of Transportation may enter into contracts for construction, maintenance, or repair without complying with the bidding requirements of this section upon a determination of the Secretary of Transportation or the State Highway Administrator that an emergency exists and that it is not feasible or not in the public interest for the Department of Transportation to comply with the bidding requirements.

(f) Notwithstanding any other provision of law, the Department of Transportation may solicit proposals under rules and regulations adopted by the Department of Transportation for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with highway construction, maintenance, or repair. In order to promote engineering and design quality and ensure maximum competition by professional firms of all sizes, the Department may establish fiscal guidelines and limitations necessary to promote cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to reject any and all proposals is reserved to the Board of Transportation.

(g) The Department of Transportation may enter into contracts for research and development with educational institutions and nonprofit organizations without soliciting bids or proposals.

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so.

(i) The Department of Transportation may negotiate and enter into contracts with public utility companies for the lease, purchase, installation, and maintenance of generators for electricity for its ferry repair facilities. (1971, c. 972, s. 1; 1973, c. 507, ss. 5, 16; c. 1194, ss. 4, 5; 1977, c. 464, ss. 7.1, 16; 1979, c. 174; 1981, c. 200, ss. 1, 2; c. 859, s. 68; 1985, c. 122, s. 2; 1985 (Reg. Sess., 1986), c. 955, s. 46; c. 1018, s. 2; 1987, c. 400; 1989, c. 78; c. 749, ss. 2, 3; 1995, c. 167, s. 1; 1997-196, s. 1.)

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 18.14, provides: "The Department of Transportation may enter into a design-build-warrant contract to develop, with Federal Highway Administration participation under The 1991 Intermodal Surface Transportation Efficiency Açt, Title VI, Part B, Sections 6051-6059, a 'Congestion Avoidance and Reduction for Autos and Trucks (CARAT)' system of traffic management for the greater Charlotte-Mecklenburg urban areas. Notwithstanding any other provision of law, contractors, contractors' employees, and Department of Transportation employees involved in this project only do not have to be licensed by occupational licensing boards as 'license' and 'occupational licensing board' are defined in G.S. 93B-1; and for the purpose of entering into contracts, the Department of Transportation is exempted from the provisions of the following General Statutes: G.S. 136-28.1, 143-52, 143-53, 143-58, 143-128, and 143-129. These statutory exemptions are limited and available only to the extent necessary to comply with federal rules, regulations, and policies for completion of this project.

"The Department of Transportation shall report quarterly to the Joint Legislative Transportation Oversight Committee on its efforts to enter into a design-build-warrant contract and to award and construct the project. The report shall include, but not be limited to, the number of types of firms bidding on the project, special qualifications of the firms bidding, and the effect statutory exemptions might have had on the award and construction of the project and the receipt of federal discretionary funding for the project."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1997-443, s. 32.11, provides that the Department of Transportation may enter into a design-build-warrant contract to develop, with Federal Highway Administration participation, a Congestion Avoidance and Reduction for Autos and Trucks (CARAT) system of traffic management in the Charlotte-Mecklenburg urban areas. Notwithstanding any other provision of law, contractors, their employees, and Department of Transportation employees involved in this project only do not have to be licensed by occupational licensing boards, and for the purpose of entering into contracts, the Department of Transportation is exempted from the provisions of G.S. 136-28.1, 143-52, 143-53, 143-58, 143-128, and 143-129; these exemptions are limited and available only to the extent necessary to comply with federal rules, regulations, and policies for completion of this project. The Department shall report quarterly to the Joint Legislative Transportation Oversight Committee on the project.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective June 19, 1997, rewrote subsection (f).

§ 136-28.6. Private contract participation by the Department of Transportation.

(a) The Department of Transportation may participate in private engineering and construction contracts for State highways.

(b) In order to qualify for State participation, the project must be:

(1) The construction of a street or highway on the Transportation Improvement Plan adopted by the Department of Transportation; or

(2) The construction of a street or highway on a mutually adopted thoroughfare plan that is designated a Department of Transportation responsibility.

(c) Only those projects in which the developer furnishes the right-of-way without cost to the Department of Transportation are eligible.

(d) The Department's participation shall be limited to fifty percent (50%) of the amount of any engineering contract and/or any construction contract let by the developer for the project.

(e) Participation in the contracts shall be limited to cost associated with normal practices of the Department of Transportation.

(f) Plans for the project must meet Department of Transportation standards and shall be approved by the Department of Transportation.

(g) Projects shall be constructed in accordance with the plans and specifications approved by the Department of Transportation.

(h) The Secretary shall report in writing, on a quarterly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between a private developer and the Department of Transportation for participation in private engineering and construction contracts under this section.

(i) Municipalities may participate financially in private engineering and construction contracts for projects pertaining to streets or highways which are on a mutually adopted thoroughfare plan for said municipality. (1987, c. 860, ss. 1, 2; 1989, c. 749, s. 1; 1991, c. 272, s. 1; 1993, c. 183, s. 1; 1995, c. 358, s. 5; c. 437, s. 3; c. 447, ss. 1, 2.)

Editor's Note. — Session Laws 1995, c. 447, s. 1, deleted the provision in Session Laws 1987, c. 860, s. 2, as amended, providing for expiration of this section.

Session Laws 1987, c. 860, s. 2, as amended by Session Laws 1989, c. 749, s. 1, by Session Laws 1991, c. 272, s. 1, by Session Laws 1993, c. 183, s. 1, by Session Laws 1995, c. 358, s. 5, and by Session Laws 1995, c. 437, s. 3, made this section effective upon ratification (August 14, 1987), and provided that it would expire July 21, 1995.

§ 136-28.8. Use of recycled materials in construction.

(a) It is the intent of the General Assembly that the Department of Transportation continue to expand its use of recycled materials in its construction programs.

(b) The General Assembly declares it to be in the public interest to find alternative ways to use certain recycled materials that currently are part of the solid waste stream and that contribute to problems of declining space in landfills. To the extent economically practicable, the Department shall use:

(1) Rubber from tires in road pavements, subbase materials, or other appropriate applications; and

(2) Recycled materials for guard rail posts, right-of-way fence posts, and sign supports

so long as these materials meet all appropriate engineering standards.

(c) As a part of its scheduled projects, the Department shall conduct additional research, which may include demonstration projects, on the use of recycled materials in construction.

(d) The Department shall review and revise existing bid procedures and specifications to eliminate any procedures and specifications that explicitly discriminate against recycled materials in construction, except where the procedures and specifications are necessary to protect the health, safety, and welfare of the people of this State.

(e) The Department shall review and revise its bid procedures and specifications on a continuing basis to encourage the use of recycled materials in construction and shall, to the extent economically practicable, require the use of recycled materials.

(f) All agencies shall cooperate with the Department in carrying out the provisions of this section.

(g) On or before October 1 of each year, the Department shall report to the Division of Pollution Prevention and Environmental Assistance of the Department of Environment and Natural Resources as to the amounts and types of recycled materials that were specified or used in contracts that were entered into during the previous fiscal year. On or before December 1 of each year, the Division of Pollution Prevention and Environmental Assistance shall prepare a summary of this report and submit the summary to the Joint Legislative Commission on Governmental Operations and the Environmental Review Commission.

(h) The Department, in consultation with the Department of Environment and Natural Resources, shall determine minimum content standards for recycled materials.

(i) This section is broadly applicable to all procurements by the Department if the quality of the product is consistent with the requirements of the bid specifications.

(j) The Department may adopt rules to implement this section. (1989, c. 784, s. 6; 1993, c. 256, s. 3; 1995 (Reg. Sess., 1996), c. 743, s. 9; 1997-443, s. 11A.119(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, rewrote subsection (g).

The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 136-28.10. Highway Fund and Highway Trust Fund Small Project Bidding.

Editor's Note. — Session Laws 1993, c. 561, s. 65, effective July 1, 1993, was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 136-32. Other than official signs prohibited.

Editor's Note. — Session Laws 1993, c. 539, s. 981, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-32.1. Misleading signs prohibited.

Editor's Note. — Session Laws 1993, c. 539, s. 982, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-32.2. Placing blinding, deceptive or distracting lights unlawful.

Editor's Note. — Session Laws 1993, c. 539, s. 983, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-33. Damaging or removing signs; rewards.

Editor's Note. — Session Laws 1993, c. 539, s. 984, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-41.1. Appropriation to municipalities; allocation of funds generally; allocation to Butner.

(a) There is annually appropriated out of the State Highway Fund a sum equal to the net amount after refunds that was produced during the fiscal year by a one and three-fourths cents (1¾¢) tax on each gallon of motor fuel taxed under Article 36C of

Chapter 105 of the General Statutes and on the equivalent amount of alternative fuel taxed under Article 36D of that Chapter. The amount appropriated shall be allocated in cash on or before October 1 of each year to the cities and towns of the State in accordance with this section. In addition, as provided in G.S. 136-176(b)(3), revenue is allocated and appropriated from the Highway Trust Fund to the cities and towns of this State to be used for the same purposes and distributed in the same manner as the revenue appropriated to them under this section from the Highway Fund. Like the appropriation from the Highway Fund, the appropriation from the Highway Trust Fund shall be based on revenue collected during the fiscal year preceding the date the distribution is made.

Seventy-five percent (75%) of the funds appropriated for cities and towns shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer. This annual estimation of population shall include increases in the population within the municipalities caused by annexations accomplished through July 1 of the calendar year in which these funds are distributed. Twenty-five percent (25%) of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which does not form a part of the State highway system bears to the total mileage of the public streets in all eligible municipalities which do not constitute a part of the State highway system.

It shall be the duty of the mayor of each municipality to report to the Department of Transportation such information as it may request for its guidance in determining the eligibility of each municipality to receive funds under this section and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the Department of Transportation, the Department of Transportation may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 of each year. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety percent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this section during the next fiscal year, to be paid for out of such funds when received.

The Department of Transportation may withhold each year an amount not to exceed one percent (1%) of the total amount appropriated for distribution under this section for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word "street" as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than 16 feet.

In order to obtain the necessary information to distribute the funds herein allocated, the Department of Transportation may require that each municipality eligible to receive funds under this section submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The Department of Transportation may in its discretion require the certification of mileage on a biennial basis.

(b) For purposes of this section and of G.S. 136-41.2 and 136-41.3, urban service districts defined by the governing board of a consolidated city-county in which street services are provided by the consolidated city-county, as defined by G.S. 160B-2(1), shall be considered eligible municipalities, and the allocations to be made thereby shall be made to the government of the consolidated city-county.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section and of G.S. 136-41.2, the unincorporated area known as Butner qualifies in all respects for allocation of funds under this section and certification of the population and street mileage of Butner by the North Carolina Department of Health and Human Services is acceptable. Funds allocated to the area for this purpose shall be administered by the member of the State Board of Transportation administering the Highway Fund in Granville County. (1951, c. 260, s. 2; c. 948, ss. 2, 3; 1953, c. 1127; 1957, c. 65, s. 11; 1963, c. 854, ss. 1, 2; 1969, c. 665, ss. 1, 2; 1971, c. 182, ss. 1-3; 1973, c. 476, s. 193; c. 500, s. 1; c. 507, s. 5; c. 537, s. 6; 1975, c. 513; 1977, c. 464, s. 7.1; 1979, 2nd Sess., c. 1137, s. 50; 1981, c. 690, s. 4; c. 859, s. 9.2; c. 1127, s. 54; 1985 (Reg. Sess., 1986), c. 982, s. 1; 1989, c. 692, s. 1.6; 1995, c. 390, s. 26; c. 461, s. 18; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1995, c. 461, s. 20, contains a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 136-41.3. Use of funds; records and annual statement; excess accumulation of funds; contracts for maintenance, etc., of streets.

The funds allocated to cities and towns under the provisions of G.S. 136-41.2 shall be expended by said cities and towns only for the purpose of maintaining, repairing, constructing, reconstructing or widening of any street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenances within the corporate limits of the municipality or for meeting the municipality's proportionate share of assessments levied for such purposes, or for the planning, construction and maintenance of bikeways located within the rights-of-way of public streets and highways, or for the planning, construction, and maintenance of sidewalks along public streets and highways.

Each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall maintain a separate record of accounts indicating in detail all receipts and expenditures of such funds. It shall be unlawful for any municipal employee or member of any governing body to authorize, direct, or permit the expenditure of any funds accruing to any municipality by virtue of G.S. 136-41.1 and 136-41.2 for any purpose not herein authorized. Any member of any governing body or municipal employee shall be personally liable for any unauthorized expenditures. On or before the first day of August each year, the treasurer, auditor, or other responsible official of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall file a statement under oath with the Secretary of Transportation showing in detail the expenditure of funds received by virtue of G.S. 136-41.1 and 136-41.2 during the preceding year and the balance on hand.

No funds allocated to municipalities pursuant to G.S. 136-41.1 and 136-41.2 shall be permitted to accumulate for a period greater than permitted by this section. Interest on accumulated funds shall be used only for the purposes permitted by the provisions of G.S. 136-41.3. Any municipality having accumulated an amount greater than the sum of the past 10 allocations made, shall have an amount equal to such excess deducted from the next allocation after receipt of the report required by this section. Such deductions shall be carried over and added to the amount to be allocated to municipalities for the following year.

In the discretion of the local governing body of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 it may contract with the Department of Transportation to do the work of maintenance, repair, construction, reconstruction, widening or improving the streets in such municipality; or it may let contracts in the usual manner as prescribed by the General Statutes to private contractors for the performance of said street work; or may undertake the work by force account. The Department of Transportation within its discretion is hereby authorized to enter into contracts with municipalities for the purpose of maintenance, repair, construction, reconstruction, widening or improving streets of municipalities. And the Department of Transportation in its discretion may contract with any city or town which it deems qualified and equipped so to do that the city or town shall do the work of maintaining, repairing, improving, constructing, reconstructing, or widening such of its streets as form a part of the State highway system.

In the case of each eligible municipality, as defined in G.S. 136-41.2, having a population of less than 5,000, the Department of Transportation shall upon the request of such municipality made by official action of its governing body, on or prior to June 1, 1953, or June 1 in any year thereafter, for the fiscal year beginning July 1, 1953, and for the years thereafter do such street construction, maintenance, or improvement on nonsystem streets as the municipality may request within the limits of the current or accrued payments made to the municipality under the provisions of G.S. 136-41.1.

In computing the costs, the Department of Transportation may use the same rates for equipment, rental, labor, materials, supervision, engineering and other items, which the Department of Transportation uses in making charges to one of its own department or against its own department, or the Department of Transportation may employ a contractor to do the work, in which case the charges will be the contract cost plus engineering and inspection. The municipality is to specify the location, extent, and type of the work to be done, and shall provide the necessary rights-of-way, authorization for the removal of such items as poles, trees, water and sewer lines as may be necessary, holding the Department of Transportation free from any claim by virtue of such items of cost and from such damage or claims as may arise therefrom except from negligence on the part of the Department of Transportation, its agents, or employees.

If a municipality elects to bring itself under the provisions of the two preceding paragraphs, it shall enter into a two-year contract with the Department of Transportation and if it desires to dissolve the contract at the end of any two-year period it shall notify the Department of Transportation of its desire to terminate said contract on or before April 1 of the year in which such contract shall expire; otherwise, said contract shall continue for an additional two-year period, and if the municipality elects to bring itself under the provisions of the two preceding paragraphs and thereafter fails to pay its account to the Department of Transportation for the fiscal year ending June 30, by August 1 following the fiscal year, then the Department of Transportation shall apply the said municipality's allocation under G.S. 136-41.1 to this account until said account is paid and the Department of Transportation shall not be obligated to do any further work provided for in the two preceding paragraphs until such account is paid.

Section 143-129 of the General Statutes relating to the procedure for letting of public contracts shall not be applicable to contracts undertaken by any municipality with the Department of Transportation in accordance with the provisions of the three preceding paragraphs.

The Department of Transportation is authorized to apply a municipality's share of funds allocated to a municipality under the provisions of G.S. 136-41.1 to any of the following accounts of the municipality with the said Department of Transportation, which the municipality fails to pay:

(1) Cost sharing agreements for right-of-way entered into pursuant to G.S. 136-66.3, but not to exceed ten percent (10%) of any one year's allocation until the debt is repaid,

(2) The cost of relocating municipally owned waterlines and other municipally owned utilities on a State highway project which is the responsibility of the municipality,

(3) For any other work performed for the municipality by the Department of Transportation or its contractor by agreement between the Department of Transportation and the municipality, and

(4) For any other work performed that was made necessary by the construction, reconstruction or paving of a highway on the State highway system for which the municipality is legally responsible. (1951, c. 260, s. 3; c. 948, s. 4; 1953, c. 1044; 1957, c. 65, s. 11; 1969, c. 665, ss. 3, 4; 1971, c. 182, s. 4; 1973, c. 193; c. 507, s. 5; 1977, c. 464, ss. 7.1, 20; c. 808; 1993 (Reg. Sess., 1994), c. 690, s. 1.1.)

ARTICLE 2A.

State Roads Generally.

§ 136-44.1. Statewide road system; policies.

Local Modification. — Village of Bald Head Island: 1997-324, s.1.

§ 136-44.2. Budget and appropriations.

The Director of the Budget shall include in the "Current Operations Appropriations Bill" an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance programs for that budget period for the State primary, secondary, urban, and State parks road systems. The State primary system shall include all portions of the State highway system located outside municipal corporate limits which are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located outside municipal corporate limits that is not a part of the State primary system. The State urban system shall include all portions of the State highway system located within municipal corporate limits. The State parks system shall include all State parks roads and parking lots which are not also part of the State highway system.

All construction and maintenance programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal-aid construction programs shall be enumerated separately as well as the federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, and ferry operations shall be enumerated in the budget.

The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. No federally eligible construction project may be funded entirely with State funds unless the Department of Transportation has first consulted with the Joint Legislative Commission on Governmental Operations. For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

The "Current Operations Appropriations Bill" shall also contain the proposed appropriations of State funds for use in each county for maintenance and construction of secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the construction and maintenance of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.5 and 136-44.6.

If the unreserved credit balance in the Highway Fund on the last day of a fiscal year is greater than the amount estimated for that date in the Current Operations Appropriations Act for the following fiscal year, the excess shall be used in accordance with this paragraph. The Director of the Budget may allocate part or all of the excess among reserves for access and public roads, for unforeseen events requiring prompt action, or for other urgent needs. The amount not allocated to any of these reserves by the Director of the Budget shall be credited to a reserve for maintenance. The Board of Transportation shall report monthly to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on the use of funds in the maintenance reserve.

The Department of Transportation may provide for costs incurred or accrued for traffic control measures to be taken by the Department at major events which involve a high degree of traffic concentration on State highways, and which cannot be funded from regular budgeted items. This authorization applies only to events which are expected to generate 30,000 vehicles or more per day. The Department of Transportation shall provide for this funding by allocating and reserving up to one hundred thousand dollars ($100,000) before any other allocations from the appropriations for State maintenance for primary, secondary, and urban road systems are made, based upon the same proportion as is appropriated to each system. (1973, c. 507, s. 3; 1977, c. 464, s. 7.1; 1981, c. 859, s. 84; 1983, c. 717, ss. 46, 47; 1987, c. 830, s. 113(b); 1989, c. 799, s. 12(a); 1991 (Reg. Sess., 1992), c. 907, s. 2; c. 1044, s. 35; 1997-443, s. 32.5.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, rewrote the sixth paragraph.

§ 136-44.2A. Secondary road construction.

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.4 provides: "Five hundred thousand dollars ($500,000) of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1994-95 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the signing of State-maintained county roads in the 17 counties where signing has not already been funded."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

§ 136-44.3. Maintenance program.

In each even-numbered year, the Department of Transportation shall survey the condition of the State highway system and shall prepare a report of the findings of the survey. The report shall provide both quantitative and qualitative descriptions of the condition of the system and shall provide estimates of the following:

(1) The annual cost of routine maintenance of the State highway system;
(2) The cost of eliminating any maintenance backlog by categories of maintenance requirements;
(3) The annual cost to resurface the State highway system based upon a 12-year repaving cycle for the primary system and a 15-year cycle for other highways; and
(4) The cost of eliminating any resurfacing backlog, by type of system.

On the basis of the report, the Department of Transportation shall develop a statewide annual maintenance program for the State highway system, which shall be subject to the approval of the Board of Transportation and shall take into consideration the general maintenance needs, special maintenance needs, vehicular traffic, and other factors deemed pertinent.

Each division engineer, at the end of the fiscal year, shall certify the maintenance of highways in his division in accordance with the annual work program, along with an explanation for any deviations.

The report on the condition of the State highway system and the annual maintenance program shall be presented to the Joint Legislative Transportation Oversight Committee by November 30 of each even-numbered year, and copies shall be made available to any member of the General Assembly upon request. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1977, c. 464, s. 39; 1997-443, s. 32.19.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, rewrote this section.

§ 136-44.5. Secondary roads; mileage study; allocation of funds.

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.4 provides: "Five hundred thousand dollars ($500,000) of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1994-95 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the signing of State-maintained county roads in the 17 counties where signing has not already been funded."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1995, c. 324, s. 18.12, as amended by Session Laws 1995, c. 507, s. 18.5, provides: "Of the funds appropriated in this act to the Department of Transportation:

"(1) Fourteen million dollars

($14,000,000) shall be allocated in each fiscal year for small urban construction projects. These funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for the small urban construction program for small urban construction projects that are located within the area covered by a one-mile radius of the municipal corporate limits.

"(2) Nine million dollars ($9,000,000) shall be used statewide for rural or small urban highway improvements, industrial access roads, and spot-safety projects as approved by the Secretary of the Department of Transportation."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1997-443, s. 32.4, provides that, of the funds appropriated in that act to the Department of Transportation, $14,000,000 shall be allocated in each fiscal year for small urban construction projects, allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for small urban construction projects located within the area covered by a one-mile radius of the municipal corporate limits; that $10,000,000 shall be used statewide for rural or small urban highway improvements, industrial access roads, and spot safety projects; that none of these funds used for rural secondary road construction are subject to the county allocation formula as provided in this section; and that the Department shall report to the General Assembly on projects funded pursuant to this section in each member's district prior to the Board of Transportation's action, and shall make a quarterly comprehensive report on the use of these funds to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occuring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 35.4, is a severability clause.

§ 136-44.7A. Submission of secondary roads construction programs to State agencies.

When the Department of Transportation proposes to pave an unpaved secondary road that crosses land controlled by a State agency, the Department of Transportation shall obtain the approval of that State agency before paving that secondary road. (1996, 2nd Ex. Sess., c. 18, s. 19.7.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 29.6, made this section effective July 1, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

§ 136-44.12. Maintenance of roads and parking lots in areas administered by the Division of Parks and Recreation.

The Department of Transportation shall maintain all roads and parking lots which are not part of the State Highway System, leading into and located within the boundaries of all areas administered by the Division of Parks and Recreation of the Department of Environment and Natural Resources.

All such roads and parking lots shall be planned, designed, and engineered through joint action between the Department of Transportation and the Division of Parks and Recreation of the Department of Environment and Natural Resources. This joint action shall encompass all accepted park planning and design principles. Particular concern shall be given to traffic counts and vehicle weight, minimal cutting into or through any natural and scenic areas, width of shoulders, the cutting of natural growth along roadways, and the reduction of any potential use of roads or parking lots for any purpose other than by park users. All State park roads and parking lots shall conform to the standards regarding width and other roadway specifications as agreed upon by the Division of Parks and Recreation of the Department of Environment and Natural Resources and the Department of Transportation.

The State park road systems may be closed to the public in accordance with approved park practices that control the use of State areas so as to protect these areas from overuse and abuse and provide for functional use of the park areas, or for any other purpose considered in the best interest of the public by the Division of Parks and Recreation of the Department of Environment and Natural Resources.

Nothing herein shall be construed to include the transfer to the Department of Transportation the powers now vested in the Division of Parks and Recreation of the Department of Environment and Natural Resources relating to the patrol and safeguarding of State park roads or State park parking lots. (1973, c. 123, ss. 1-3; 1977, c. 771, s. 4; 1989, c. 727, s. 218(89); c. 799, s. 12(b); 1991 (Reg. Sess., 1992), c. 907, s. 3; 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 136-44.16. Resurfaced roads may be widened.

Of the contract maintenance resurfacing program funds appropriated by the General Assembly to the Department of Transportation, an amount not to exceed fifteen percent (15%) of the Board of Transportation's allocation of these funds may be used for widening existing narrow pavements that are scheduled for resurfacing. (1997-443, s. 32.12.)

Editor's Note. — Session Laws 1997-443, s. 35.5, made this section effective July 1, 1997.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

ARTICLE 2D.

Railroad Revitalization.

§ 136-44.36D. Recreational leasing requirements.

Portions of rail corridors held by the North Carolina Department of Transportation in fee simple absolute may be leased by the Department for interim public recreation use provided the following conditions are met:

(1) Before requesting trail use, a sponsoring unit of local government has held a public hearing in accordance with G.S. 143-318.12 and notified the owners of all parcels of land abutting the corridor as shown on the county tax listing of the hearing date, place, and time by first-class mail at the last addresses listed for such owners on the county tax abstracts. A transcript of all public comments presented at the hearing has been sent to the North Carolina Department of Transportation at the time of requesting use of the corridor.

(2) A unit of local government has requested use of the rail corridor or a portion thereof for interim public recreational trail use, and agrees in writing to assume all development costs as well as management, security, and liability responsibilities as defined by the North Carolina Department of Environment and Natural Resources and the North Carolina Department of Transportation.

(3) Adjacent property owners are offered broad voting representation by membership in the organization, if any, that is delegated most immediate responsibility for development and management of the rail-trail by the sponsoring local government.

(4) The North Carolina Department of Transportation has determined that there will not likely be a need to resume active rail service in the leased portion of the rail corridor for at least 10 years.

(5) Any lease or other agreement allowing trail use includes terms for resumption of active rail use which will assure unbroken continuation of the corridor's perpetual use for railroad purposes and interim compatible uses.

(6) Use of the rail corridor or portions thereof as a recreational trail does not interfere with the ultimate transportation purposes of the corridor as determined by the North Carolina Department of Transportation. (1991, c. 751, s. 1; 1997-443, s. 11A.119(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997

amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

ARTICLE 3.

State Highway System.

Part 1. Highway System.

§ 136-45. General purpose of law; control, repair and maintenance of highways.

CASE NOTES

Liability for Defects in Highway. —

Where the portions of roads in question were part of the state highway system, and as such, the responsibility of the N.C. Department of Transportation (NCDOT), apart from its contract with the NCDOT, city had no responsibility for the maintenance or condition of the traffic signal in question. Colombo v. Dorrity, 115 N.C. App. 81, 443 S.E.2d 752, cert. denied, 337 N.C. 689, 448 S.E.2d 517 (1994).

ARTICLE 3A.

Streets and Highways in and around Municipalities.

§ 136-66.1. Responsibility for streets inside municipalities.

Responsibility for streets and highways inside the corporate limits of municipalities is hereby defined as follows:

(1) The State Highway System. — The State highway system inside the corporate limits of municipalities shall consist of a system of major streets and highways necessary to move volumes of traffic efficiently and effectively from points beyond the corporate limits of the municipalities through the municipalities and to major business, industrial, governmental and institutional destinations located inside the municipalities. The Department of Transportation shall be responsible for the maintenance, repair, improvement, widening, construction and reconstruction of this system. These streets and highways within corporate limits are of primary benefit to the State in developing a statewide coordinated system of primary and secondary streets and highways.

(2) The Municipal Street System. — In each municipality the municipal street system shall consist of those streets and highways accepted by the municipality which are not a part of the State highway system. The municipality shall be responsible for the maintenance, construction, reconstruction, and right-of-way acquisition for this system.

(3) Maintenance of State Highway System by Municipalities. — Any city or town, by written contract with the Department of Transportation, may undertake to maintain, repair,

improve, construct, reconstruct or widen those streets within municipal limits which form a part of the State highway system, and may also, by written contract with the Department of Transportation, undertake to install, repair and maintain highway signs and markings, electric traffic signals and other traffic-control devices on such streets. All work to be performed by the city or town under such contract or contracts shall be in accordance with Department of Transportation standards, and the consideration to be paid by the Department of Transportation to the city or town for such work, whether in money or in services, shall be adequate to reimburse the city or town for all costs and expenses, direct or indirect, incurred by it in the performance of such work.

(4) If the governing body of any municipality determines that it is in the best interest of its citizens to do so, it may expend its funds for the purpose of making any of the following improvements on streets that are within its corporate limits and form a part of the State highway system:

a. Construction of curbing and guttering.
b. Adding of lanes for automobile parking.
c. Constructing street drainage facilities which may by reasonable engineering estimates be attributable to that amount of surface water collected upon and flowing from municipal streets which do not form a part of the State highway system.
d. Constructing sidewalks.
e. Intersection improvements, if the governing body determines that such improvements will decrease traffic congestion, improve safety conditions, and improve air quality.

In exercising the authority granted herein, the municipality may, with the consent of the Department of Transportation, perform the work itself, or it may enter into a contract with the Department of Transportation to perform such work. Any work authorized by this subdivision shall be financed entirely by the municipality and be approved by the Department of Transportation.

The cost of any work financed by a municipality under this subdivision may be assessed against the properties abutting the street or highway upon which such work was performed in accordance with the procedures of either Article 10 of Chapter 160A of the General Statutes or any charter provisions or local acts applicable to the particular municipality. (1959, c. 687, s. 1; 1969, cc. 798, 978; 1973, c. 507, s. 5; 1975, c. 664, s. 3; 1977, c. 464, s. 7.1; 1987, c. 747, s. 2; 1993 (Reg. Sess., 1994), c. 690, s. 1; 1995, c. 163, s. 14.)

CASE NOTES

City Not Responsible for Controlled Access Areas. — All areas within the boundaries of the "controlled access" area are part of the State Highway system and were excepted from contract between the city and NCDOT; thus, city was not responsible for dangerous conditions within the "controlled access" areas. Eakes v. City of Durham, 125 N.C. App. 551, 481 S.E.2d 403 (1997).

City Had No Responsibility for Maintenance or Condition of Traffic Signal. — Where the portions of roads in question were part of the state highway system, and as such, the responsibility of the N.C. Department of Transportation (NCDOT), apart from its contract with the NCDOT, city had no responsibility for the maintenance or condition of the traffic signal in question. Colombo v. Dorrity, 115 N.C. App. 81, 443 S.E.2d 752, cert. denied, 337 N.C. 689, 448 S.E.2d 517 (1994).

§ 136-66.2. Development of a coordinated street system.

Local Modification. — Session Laws 1995, c. 34, s. 4, repealed Session Laws 1965, c. 987, which was shown as a local modification under this section in the main volume.

Village of Bald Head Island: 1997-324, s.1.

Article 3B.

Dedication of Right-of-Way with Density or Development Rights Transfer.

§ 136-66.10. Dedication of right-of-way under local ordinances.

CASE NOTES

Quoted in Dellinger v. City of Charlotte, 114 N.C. App. 146, 441 S.E.2d 626 (1994).

Article 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-67. Neighborhood public roads.

All those portions of the public road system of the State which have not been taken over and placed under maintenance or which have been abandoned by the Department of Transportation, but which remain open and in general use as a necessary means of ingress to and egress from the dwelling house of one or more families, and all those roads that have been laid out, constructed, or reconstructed with unemployment relief funds under the supervision of the Department of Health and Human Services, and all other roads or streets or portions of roads or streets whatsoever outside of the boundaries of any incorporated city or town in the State which serve a public use and as a means of ingress or egress for one or more families, regardless of whether the same have ever been a portion of any State or county road system, are hereby declared to be neighborhood public roads and they shall be subject to all of the provisions of G.S. 136-68, 136-69 and 136-70 with respect to the alteration, extension, or discontinuance thereof, and any interested party is authorized to institute such proceeding, and in lieu of personal service with respect to this class of roads, notice by publication once a week in any newspaper published in said county, or in the event there is no such newspaper, by posting at the courthouse door and three other public places, shall be deemed sufficient: Provided, that this definition of neighborhood public roads shall not be construed to embrace any street, road or driveway that serves an essentially private use, and all those portions and segments of old roads, formerly a part of the public road system, which have not been taken over and placed under maintenance and which have been abandoned by the Department of Transportation and which do not serve as a necessary means of ingress to and egress from an occupied dwelling house are hereby specifically excluded from the definition of neighborhood public roads, and the owner of the land, burdened with such portions and segments of such old roads, is hereby invested with the easement or right-of-way for such old roads heretofore existing.

Upon request of the board of county commissioners of any county, the Department of Transportation is permitted, but is not required, to place such neighborhood public roads as above defined in a passable condition without incorporating the same into the State or county system, and without becoming obligated in any manner for the permanent maintenance thereof.

This section shall not authorize the reopening on abandoned roads of any railroad grade crossing that has been closed by order of the Department of Transportation in connection with the building of an overhead bridge or underpass to take the place of such grade crossing. (1929, c. 257, s. 1; 1933, c. 302; 1941, c. 183; 1949, c. 1215; 1957, c. 65, s. 11; 1969, c. 982; 1973, c. 476, s. 138; c. 507, s. 5; 1977, c. 464, s. 7.1; 1997-443, s. 11A.122.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

The establishment, alteration, or discontinuance of any cartway, church road, mill road, or like easement, for the benefit of any person, firm, association, or corporation, over the lands of another, shall be determined by a special proceeding instituted before the clerk of the superior court in the county where the property affected is situated. Such special proceeding shall be commenced by a petition filed with said clerk and the service of a copy thereof on the person or persons whose property will be affected thereby. From any final order or judgment in said special proceeding, any interested party may appeal to the superior court for a jury trial de novo on all issues including the right to relief, the location of a cartway, tramway or railway, and the assessment of damages. The procedure established under Chapter 40A, entitled "Eminent Domain," shall be followed in the conduct of such special proceeding insofar as the same is applicable and in harmony with the provisions of this section. (1879, c. 82, s. 9; Code, s. 2023; Rev., s. 2683; C.S., s. 3835; 1931, c. 448; 1995, c. 513, s. 1.)

Editor's Note. — Session Laws 1995, c. 513, s. 4 provides in part: "This act applies to actions to establish cartways filed on or after the effective date, but before July 1, 1997."

§ 136-69. Cartways, tramways, etc., laid out; procedure.

(a) If any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, or taking action preparatory to the operation of any such enterprises, to which there is leading no public road or other adequate means of transportation, other than a navigable waterway, affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in the preceding section (G.S. 136-68), and if it shall be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not less than 18 feet in width, or cableways, chutes, and flumes, and assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the clerk of the superior court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the clerk of the superior court. The clerk of the superior court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the clerk, together with the cost of the proceeding, shall be paid into the clerk's office before the petitioners shall acquire any rights under said proceeding.

(b) **(See editor's note)** Compensation to the landowner for the establishment of a cartway over the property of another shall be as provided in Chapter 40A Article 4 of the North Carolina General Statutes.

(c) Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying out and establishing of a cartway may be commenced in either the county in which the land is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. (1798, c. 508, s. 1, P.R.; 1822, c. 1139, s. 1, P.R.; R.C., c. 101, s. 37; 1879, c. 258; Code, s. 2056; 1887, c. 46; 1903, c. 102; Rev., s. 2686; 1909, c. 364, s. 1; 1917, c. 187, s. 1; c. 282, s. 1; C.S., s. 3836; 1921, c. 135; Ex. Sess., 1921, c. 73; 1929, c. 197, s. 1; 1931, c. 448; 1951, c.

1125, s. 1; 1961, c. 71; 1965, c. 414, s. 1; 1981, c. 826, s. 1; 1995, c. 513, s. 2.)

Editor's Note. — Session Laws 1995, c. 513, s. 4 provides: "This act is effective upon ratification but sections 2 and 3 expire on July 1, 1997. This act applies to actions to establish cartways filed on or after the effective date, but before July 1, 1997."

Session Laws 1995, c. 513, s. 3a, was codified as subsection (b) of this section at the direction of the Revisor of Statutes. The subsection (a) and (c) designations were assigned by the Revisor of Statutes.

ARTICLE 5.

Bridges.

§ 136-72. Load limits for bridges; penalty for violations.

Editor's Note. — Session Laws 1993, c. 539, s. 985, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-80. Fastening vessels to bridges misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 986, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 6.

Ferries, etc., and Toll Bridges.

§ 136-82. Department of Transportation to establish and maintain ferries.

The Department of Transportation is vested with authority to provide for the establishment and maintenance of ferries connecting the parts of the State highway system, whenever in its discretion the public good may so require, and to prescribe and collect such tolls therefor as may, in the discretion of the Department of Transportation, be expedient.

To accomplish the purpose of this section said Department of Transportation is authorized to acquire, own, lease, charter or otherwise control all necessary vessels, boats, terminals or other facilities required for the proper operation of such ferries or to enter into contracts with persons, firms or corporations for the operation thereof and to pay therefor such reasonable sums as may in the opinion of said Department of Transportation represent the fair value of the public service rendered.

The Department of Transportation, notwithstanding any other provision of law, may operate, or contract for the operation of, concessions on the ferries and at ferry facilities to provide to passengers on the ferries food, drink, and other refreshments, personal comfort items, and souvenirs publicizing the ferry system. (1927, c. 223; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1989, c. 752, s. 101; 1995, c. 211, s. 1.)

§ 136-82.2. State toll bridges.

(a) Toll. — The Department of Transportation may charge a toll for the use of a bridge that is included in the Highway Trust Fund Intrastate System Projects, which are listed in G.S. 136-179, and is at least three and one-half miles in length. The toll may not exceed ten dollars ($10.00) for a round trip or five hundred dollars ($500.00) for an annual pass for a vehicle. The Department may set different rates of fees for passenger motor vehicles and for property-carrying vehicles. The Department may employ personnel to collect the toll and may construct and operate a toll plaza for collection of the toll. Toll revenue that exceeds the cost of collecting the toll shall be credited to the Highway Trust Fund.

(b) Report. — The Department of Transportation shall report annually to the Joint Legislative Transportation Oversight Committee on a toll imposed under this section. The report shall state the amount of toll revenue collected, the number of users paying the toll, the cost of collecting the toll, and any other information requested by the Committee. (1993 (Reg. Sess., 1994), c. 765, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 765, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

§ 136-89. Safety measures; guard chains or gates.

Editor's Note. — Session Laws 1993, c. 539, s. 987, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 6D.

Controlled-Access Facilities.

§ 136-89.56. Commercial enterprises.

No commercial enterprises or activities shall be authorized or conducted by the Department of Transportation, or the governing body of any city or town, within or on the property acquired for or designated as a controlled-access facility, as defined in this Article, except for:

(1) Materials displayed at welcome centers which shall be directly related to travel, accommodations, tourist-related activities, tourist-related services, and attractions. The Department of Transportation shall issue rules regulating

the display of these materials. These materials may contain advertisements for real estate; and

(2) Vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Health and Human Services, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. In order to permit the establishment of adequate fuel and other service facilities by private owners or their lessees for the users of a controlled-access facility, the Department of Transportation shall permit access to service or frontage roads within the publicly owned right-of-way of any controlled-access facility established or designated as provided in this Article, at points which, in the opinion of the Department of Transportation, will best serve the public interest. The location of such fuel and other service facilities may be indicated to the users of the controlled-access facilities by appropriate signs, the size, style, and specifications of which shall be determined by the Department of Transportation.

The location of fuel and other service facilities may be indicated to the users of the controlled access facilities by appropriate logos placed on signs owned, controlled, and erected by the Department of Transportation. The owners, operators or lessees of fuel and other service facilities who wish to place a logo identifying their business or service on a sign shall furnish a logo meeting the size, style and specifications determined by the Department of Transportation and shall pay the Department for the costs of initial installation and subsequent maintenance. The fees for logo sign installation and maintenance shall be set by the Board of Transportation based on cost. (1957, c. 993, s. 9; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1981, c. 481, s. 1; 1983, c. 604, s. 1; 1985, c. 456; c. 718, ss. 2, 3, 6; 1987, c. 417, s. 2; 1996, 2nd Ex. Sess., c. 18, s. 19.10(b); 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, deleted "vending" at the end of the introductory language; added subdivision (1); and added the subdivision (2) designation and added "Vending" at the beginning of subdivision (2).

The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 136-89.58. Unlawful use of National System of Interstate and Defense Highways and other controlled-access facilities.

Editor's Note. — Session Laws 1993, c. 539, s. 988, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 6E.

North Carolina Turnpike Authority.

§§ 136-89.78 through 136-89.158: Reserved for future codification purposes.

ARTICLE 6F.

North Carolina Bridge Authority.

§ 136-89.159. Bridge projects.

(a) The creation of the North Carolina Bridge Authority is necessitated by:

(1) The high cost of constructing long bridges;

(2) The need for providing better access to areas of a peninsula of the mainland where egress has been blocked by federal acquisition of property; and

(3) The need for providing additional critically needed evacuation routes from the Outer Banks during hurricanes and in the event of other natural disasters.

(b) The North Carolina Bridge Authority shall construct, maintain, repair, and operate a bridge of more than two miles in length going from the mainland to a peninsula from which land egress is through property of the United States. (1995, c. 485, s. 1.)

Editor's Note. — Session Laws 1995, c. 485, s. 3, made this Article effective upon ratification. The Act was ratified July 26, 1995.

Session Laws 1995, c. 485, s. 2 provides: "The Joint Legislative Transportation Oversight Committee shall study the best method for funding the North Carolina Bridge Authority and the construction and maintenance of a bridge in Currituck County from the mainland to the Outer Banks near Corolla, and report its findings to the General Assembly on or before the first day of the 1996 Regular Session."

§ 136-89.160. Funding for projects.

All expenses incurred in carrying out the provisions of this Article shall be payable solely from funds, including federal funds, that are now or may become available to the Authority in the future for projects. Any fees collected under this Article shall be credited to the Highway Trust Fund and used to offset the costs of building, maintaining, or operating the bridge and other related projects. (1995, c. 485, s. 1.)

§ 136-89.161. North Carolina Bridge Authority.

(a) There is created a body politic and corporate to be known as the "North Carolina Bridge Authority". The Authority is constituted a public agency, and the exercise by the Authority of the powers conferred by this Article in the construction, operation, and maintenance of the bridge project shall be deemed and held to be the performance of an essential governmental function.

(b) The North Carolina Bridge Authority shall consist of eight members:

(1) The Secretary of Transportation.

(2) Three members shall be appointed by the Governor, one for a term expiring on July 1, 1996, one for a term expiring on July 1, 1997, and one for a term expiring on July 1, 1998. Each subsequent appointment shall be for a term of four years.

(3) Four members shall be appointed by the General Assembly, two upon the recommendation of the President Pro Tempore of the Senate and two upon the recommendation of the Speaker of the House of Representatives, in accordance with G.S. 120-121.

a. The President Pro Tempore of the Senate shall recommend the appointment of two members, one of whom shall serve a term expiring June 30, 1997, and one of whom shall serve a term expiring June 30, 1999. Each subsequent regular appointment shall be for a term of four years.

b. The Speaker of the House shall recommend the appointment of two members, one of whom shall serve a term expiring June 30, 1997, and one of whom shall serve a term expiring June 30, 1999. Each subsequent regular appointment shall be for a term of four years.

(c) The successor of each of the appointed members shall be appointed for a term of four years, but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term, and a member of the Authority shall be eligible for reappointment. Each appointed member of the Authority may be removed by the appointing authority for misfeasance, malfeasance, or willful neglect of duty. Each appointed member of the Authority before entering upon the member's duties shall take an oath to administer the duties of the office faithfully and impartially, and a record of each oath shall be filed in the Office of the Secretary of State.

(d) At its first meeting after July 1, 1995, and every two years thereafter, the Authority shall elect from its appointed membership a chair and a vice-chair. The Authority shall also elect a secretary who need not be a member of the Authority. The secretary shall serve as an officer at the pleasure of the Authority. Five members of the Authority shall constitute a quorum, and the affirmative vote of five members shall be necessary for any action taken by the Authority. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

(e) The appointed members of the Authority shall receive no salary for their services but shall be entitled to receive per diem and allowances in accordance with the provisions of G.S. 138-5.

(f) The Authority shall be located within the Department of Transportation for administrative purposes but shall exercise all of its powers independently of the Department of Transportation.

(g) The Authority shall adopt bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational and administrative matters as the Authority may determine.

(h) Upon completion of any bridge constructed pursuant to this Article, the Authority shall appoint an executive director, whose salary shall be fixed by the Authority, to serve at its pleasure. Prior to appointing an Executive Director, the Authority shall confer with the Governor regarding the proposed salary to be paid to the Executive Director. The Executive Director shall be responsible for the daily administration of bridges constructed, maintained, or operated pursuant to this Article. (1995, c. 485, s. 1.)

§ 136-89.162. Powers of the Authority.

(a) The Authority shall have all of the powers necessary to execute the provisions of this Article which shall include at least the following powers:

(1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.

(2) To establish, purchase, construct, operate, and regulate bridges and to own, lease, sell, or manage real or personal property.

(3) To charge and collect tolls and fees for the use of the bridges, for services rendered in the operation of the bridges, or to offset the costs of building the bridges. A toll shall not exceed ten dollars ($10.00) and an annual fee for a single vehicle to use the bridge during a year shall not exceed five hundred dollars ($500.00). The Authority shall report its schedule of tolls and fees to the Joint Legislative Transportation Oversight Committee.

(4) To rent, lease, purchase, acquire, own, encumber, or dispose of real or personal property.

(5) To establish, construct, purchase, maintain, equip, and operate any structure or facilities associated with a bridge.

(6) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.

(7) To apply for, accept, and administer loans and grants of money from any federal agency, from the State or its political subdivisions, or from any other public or private sources available.

(8) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Article.

(9) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants and employees as may be required in the judgment of the Authority and to fix and pay their compensation from funds available to the Authority.

(10) To procure and maintain adequate insurance or otherwise provide for adequate protection to indemnify the Authority and its officers, directors, agents, employees, adjoining

property owners, or the general public against loss or liability resulting from any act or omission by or on behalf of the Authority.

(11) To receive and use appropriations from the State, including an appropriation from the proceeds of State general obligation bonds or notes.

(b) To execute the powers provided in subsection (a) of this section, the Authority shall determine its policies by majority vote of the members of the Authority present and voting, a quorum having been established. (1995, c. 485, s. 1.)

§ 136-89.163. Taxation of property of Authority.

Property owned by the Authority is exempt from taxation in accordance with Article V, Section 2 of the North Carolina Constitution. (1995, c. 485, s. 1.)

§ 136-89.164. Acquisition, disposition, or exchange of real property.

The Authority may acquire real property by purchase, negotiation, gift, or devise. When the Authority acquires real property owned by the State, the Secretary of the Department of Administration shall execute and deliver to the Authority a deed transferring fee simple title to the property to the Authority. (1995, c. 485, s. 1.)

§ 136-89.165. Cooperation by other State agencies.

All State officers and agencies shall render the services to the Authority within their respective functions as may be requested by the Authority. (1995, c. 485, s. 1.)

§ 136-89.166. Annual and quarterly reports.

The Authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, the General Assembly, and the Department of Transportation. Each report shall be accompanied by an audit of its books and accounts. The costs of all audits, whether conducted by the State Auditor's staff or contracted with a private auditing firm, shall be paid from funds of the Authority.

The Authority shall submit quarterly reports to the Joint Legislative Transportation Oversight Committee. The reports shall summarize the Authority's activities during the quarter and contain any information about the Authority's activities that is requested by the Committee. (1995, c. 485, s. 1.)

§ 136-89.167. Dissolution.

Whenever the Authority, by resolution, determines that the purposes for which the Authority was formed have been substantially fulfilled, the Authority may declare itself dissolved. On the effective date of the resolution, the title to all property owned by the Authority at the time of the dissolution shall vest in the State, and possession of the property shall be delivered to the State. (1995, c. 485, s. 1.)

§§ 136-89.168 through 136-89.170: Reserved for future codification purposes.

Article 7.

Miscellaneous Provisions.

§ 136-90. Obstructing highways and roads misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 989, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-91. Placing glass, etc., or injurious obstructions in road.

Editor's Note. — Session Laws 1993, c. 539, s. 990, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-92. Obstructing highway drains prohibited.

It is unlawful to obstruct a drain along or leading from any public road in the State. A person who violates this section is responsible for an infraction. (1917, c. 253; C.S., s. 3791; 1993, c. 539, s. 991; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 163, s. 15.)

Editor's Note. — Session Laws 1993, c. 539, s. 991, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1995, c. 163, s. 15, which amended this section, was effective July 1, 1995, and applicable to offenses occurring on or after that date.

§ 136-93. Openings, structures, pipes, trees, and issuance of permits.

Editor's Note. — Session Laws 1993, c. 539, s. 992, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-94. Gates projecting over rights-of-way forbidden.

Editor's Note. — Session Laws 1993, c. 539, s. 993, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-96. Road or street not used within 15 years after dedication deemed abandoned; declaration of withdrawal recorded; joint tenants or tenants in common; defunct corporations.

Local Modification. — Town of Fuquay-Varina: 1995 (Reg. Sess., 1996), c. 613, s. 1. For additional local modifications to this section, see the main volume.

CASE NOTES

Except Where Street Was Dedicated by Corporation Which Has Become Nonexistent. —

Where predecessors in title filed a declaration of withdrawal, they lost whatever sole rights to a twenty foot strip of land they may have had and became joint owners with plaintiff. Rawls v. Williford, 121 N.C. App. 762, 468 S.E.2d 460 (1996).

§ 136-98. Prohibition of local road taxes and bonds and construction of roads by local authorities; existing contracts.

(a) From and after the first day of July, 1931, no county or road district by authority of any public, public-local, or private act shall levy any taxes for the maintenance, improvement, reconstruction, or construction of any of the public roads in the various and several counties of the State, nor shall any county, through the board of commissioners thereof or the highway commission, nor shall any district or township highway commission, issue or sell or enter into any contract to issue or sell any bonds heretofore authorized to be issued and sold, but unissued and unsold, for the purpose of obtaining money with which to improve, maintain, reconstruct, or construct roads, except for the purpose of discharging obligations entered into prior to the ratification of this section, and all acts authorizing the board of county commissioners, the county highway commissions, district highway or township commissions, to issue and sell bonds for the purpose aforesaid, are hereby amended so as to conform to this section. No board of county commissioners nor county highway commission, nor district nor township highway commission from and after the passage of this section shall enter into any contract to build or construct roads in the various and several counties except for such projects as can be completed and paid for prior to July 1, 1931. All contracts heretofore entered into by any county through the board of county commissioners, county highway commission, and all contracts heretofore entered into by any district or township highway commission which shall be incomplete on July 1, 1931, shall be taken over by the Department of Transportation and completed by the Department of Transportation by the use of money and funds applicable thereto, by the terms of the said contracts. Nothing in this section or in any section of Chapter 145 of the Public Laws of 1931 that may appear in this Code shall be construed to prohibit the levying of taxes authorized by law for the payment of interest or principal on outstanding bonds or other evidences of debt lawfully issued. Any county or road district which has heretofore issued bonds or other evidences of debt by authority of law for road improvement purposes may refund said bonds or other evidences of debt under and pursuant to the laws of the State of North Carolina relative thereto.

(b) Nothing in this Article prohibits counties from establishing service districts for road maintenance under Part 1, Article 16 of Chapter 153A of the General Statutes. (1931, c. 145, s. 35; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1995, c. 434, s. 2.)

Editor's Note. — Part 1, Article 16 of Chapter 153A, referred to in the section above, is codified as 153A-274 et seq.

§ 136-102. Billboard obstructing view at entrance to school, church or public institution on public highway.

Editor's Note. — Session Laws 1993, c. 539, s. 994, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-102.3. Filing record of results of test drilling or boring with Secretary of Administration and Secretary of Environment and Natural Resources.

Any person, firm or corporation making any test drilling or boring upon any public land, owned or controlled by the State of North Carolina[,] shall, forthwith after completion, file a complete record of the results of the test drilling or boring with the Secretary of Administration and with the Secretary of Environment and Natural Resources, of each test hole bored or drilled. Such records filed shall become a matter of public record. Provided, that after exploratory drilling and boring has been completed, and a lease or contract has been executed for operation, production or development of the area, the results of test drillings or borings made incidental to the operation, production or development of the area under lease or contract shall not be subject to the provisions of G.S. 136-102.2 to 136-102.4 unless otherwise provided in such lease or contract. (1967, c. 923, s. 2; 1973, c. 1262, s. 86; 1975, c. 879, s. 46; 1977, c. 771, s. 4; 1989, c. 727, s. 218(90); 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 136-102.4. Penalty for violation of §§ 136-102.2 and 136-102.3.

Editor's Note. — Session Laws 1993, c. 539, s. 995, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers.

(a) The owner of a tract or parcel of land which is subdivided from and after October 1, 1975, into two or more lots, building sites, or other divisions for sale or building development for residential purposes, where such subdivision includes a new street or the changing of an existing street, shall record a map or plat of the subdivision with the register of deeds of the county in which the land is located. The map or plat shall be recorded prior to any conveyance of a portion of said land, by reference to said map or plat.

(b) The right-of-way of any new street or change in an existing street shall be delineated upon the map or plat with particularity and such streets shall be designated to be either public or private. Any street designated on the plat or map as public shall be conclusively presumed to be an offer of dedication to the public of such street.

(c) The right-of-way and design of streets designated as public shall be in accordance with the minimum right-of-way and construction standards established by the Board of Transportation for acceptance on the State highway system. If a municipal or county subdivision control ordinance is in effect in the area proposed for subdivision, the map or plat required by this section shall not be recorded by the register of deeds until after it has received final plat approval by the municipality or county, and until after it has received a certificate of approval by the Division of Highways as herein provided as to those streets regulated in subsection (g). The certificate of approval may be issued by a district engineer of the Division of Highways of the Department of Transportation.

(d) The right-of-way and construction plans for such public streets in residential subdivisions, including plans for street drainage, shall be submitted to the Division of Highways for review and approval, prior to the recording of the subdivision plat in the office of the register of deeds. The plat or map required by this section shall not be recorded by the register of deeds without a certification pursuant to G.S. 47-30.2 and, if determined to be necessary by the

Review Officer, a certificate of approval by the Division of Highways of the plans for the public street as being in accordance with the minimum standards of the Board of Transportation for acceptance of the subdivision street on the State highway system for maintenance. The Review Officer shall not certify a map or plat subject to this section unless the new streets or changes in existing streets are designated either public or private. The certificate of approval shall not be deemed an acceptance of the dedication of the streets on the subdivision plat or map. Final acceptance by the Division of Highways of the public streets and placing them on the State highway system for maintenance shall be conclusive proof that the streets have been constructed according to the minimum standards of the Board of Transportation.

(e) No person or firm shall place or erect any utility in, over, or upon the existing or proposed right-of-way of any street in a subdivision to which this section applies, except in accordance with the Division of Highway's policies and procedures for accommodating utilities on highway rights-of-way, until the Division of Highways has given written approval of the location of such utilities. Written approval may be in the form of exchange of correspondence until such times as it is requested to add the street or streets to the State system, at which time an encroachment agreement furnished by the Division of Highways must be executed between the owner of the utility and the Division of Highways. The right of any utility placed or located on a proposed or existing subdivision public street right-of-way shall be subordinate to the street right-of-way, and the utility shall be subject to regulation by the Department of Transportation. Utilities are defined as electric power, telephone, television, telegraph, water, sewage, gas, oil, petroleum products, steam, chemicals, drainage, irrigation, and similar lines. Any utility installed in a subdivision street not in accordance with the Division of Highways accommodation policy, and without prior approval by the Division of Highways, shall be removed or relocated at no expense to the Division of Highways.

(f) Prior to entering any agreement or any conveyance with any prospective buyer, the developer and seller shall prepare and sign, and the buyer of the subject real estate shall receive and sign an acknowledgment of receipt of a separate instrument known as the subdivision streets disclosure statement (hereinafter referred to as disclosure statement). Said disclosure statement shall fully and completely disclose the status (whether public or private) of the street upon which the house or lot fronts. If the street is designated by the developer and seller as a public street, the developer and seller shall certify that the right-of-way and design of the street has been approved by the Division of Highways, and that the street has been or will be constructed by the developer and seller in accordance with the standards for subdivision streets adopted by the Board of Transportation for acceptance on the highway system. If the street is designated by the developer and seller as a private street, the developer and seller shall include in the disclosure statement an explanation of the consequences and responsibility as to maintenance of a private street, and shall fully and accurately disclose the party or parties upon whom responsibility for construction and maintenance of such street or streets shall rest, and shall further disclose that the street or streets will not be constructed to minimum standards, sufficient to allow their inclusion on the State highway system for maintenance. The disclosure statement shall contain a duplicate original which shall be given to the buyer. Written acknowledgment of receipt of the disclosure statement by the buyer shall be conclusive proof of the delivery thereof.

(g) The provisions of this section shall apply to all subdivisions located outside municipal corporate limits. As to subdivisions inside municipalities, this section shall apply to all proposed streets or changes in existing streets on the State highway system as shown on the comprehensive plan for the future development of the street system made pursuant to G.S. 136-66.2, and in effect at the date of approval of the map or plat.

(h) The provisions of this section shall not apply to any subdivision that consists only of lots located on Lakes Hickory, Norman, Mountain Island and Wylie which are lakes formed by the Catawba River which lots are leased upon October 1, 1975. No roads in any such subdivision shall be added to the State maintained road system without first having been brought up to standards established by the Board of Transportation for inclusion of roads in the system, without expense to the State. Prior to entering any agreement or any conveyance with any prospective buyer of a lot in any such subdivision, the seller shall prepare and sign, and the buyer shall receive and sign an acknowledgment of receipt of a statement fully and completely disclosing the status of and the responsibility for construction and maintenance of the road upon which such lot is located.

(i) The purpose of this section is to insure that new subdivision streets described herein to be dedicated to the public will comply with the State standards for placing subdivision streets on the State highway system for maintenance, or that full and accurate disclosure of the responsibility for construction and maintenance of private streets be made. This section shall be construed and applied in a manner which shall not inhibit the ability of public utilities to satisfy service requirements of subdivisions to which this section applies.

(j) The Division of Highways and district engineers of the Division of Highways of the Department of Transportation shall issue a certificate of approval for any subdivision affected by a roadway corridor official map established by the Board of Transportation only if the subdivision conforms to Article 2E of this Chapter or conforms to any variance issued in accordance with that Article.

(k) A willful violation of any of the provisions of this section shall be a Class 1 misdemeanor. (1975, c. 488, s. 1; 1977, c. 464, ss. 7.1, 8; 1987, c. 747, s. 21; 1993, c. 539, s. 996; 1994, Ex. Sess., c. 24, s. 14(c); 1997-309, s. 4.)

Editor's Note. —

Session Laws 1993, c. 539, s. 996, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, in subsection (d) inserted "certification pursuant to G.S. 47-30.2 and, if determined to be necessary by the Review Officer, a", added the third sentence, and made stylistic changes.

ARTICLE 8.

Citation to Highway Bond Acts.

§ 136-102.50. Highway bond acts.

(1) State of North Carolina Highway Serial Bonds. Public Laws 1921, c. 2, s. 39; Public Laws Ex. Sess. 1921, c. 74; Public Laws 1923, c. 263, s. 3; Public Laws 1925, c. 45, s. 4; Public Laws 1925, c. 133.

(2) State of North Carolina Highway Serial Bonds. Public Laws 1925, c. 35.

(3) Chowan Bridge Bonds. Public Laws 1925, c. 74; Public Laws 1927, cc. 176, 183; Public Laws 1929, cc. 128, 144; Public Laws 1935, c. 15, s. 1.

(4) The Highway Bond Act of 1927. Public Laws 1927, c. 95; 1929, c. 312.

(5) Cape Fear River Bridge Bonds. Public Laws 1927, c. 41; Public Laws 1929, cc. 127, 144; Public Laws 1931, c. 90; Public Laws 1935, c. 17.

(6) For acts which authorized the issuance of county, township, and district road bonds, and bonds for state-line bridges, having no prospective operation after 1931 in view of Public Laws 1931, c. 145, s. 35, see Chapter 70 of the Consolidated Statutes, as amended.

(7) The Highway Bond Act of 1943. Session Laws 1943, c. 322.

(8) The Secondary Road Bond Act of 1949. Session Laws 1949, cc. 1250, 1255.

(9) State Highway Bond Act of 1965. Session Laws 1965, cc. 46, 913; Session Laws 1969, c. 379.

(10) State Highway Bond Act of 1977. Session Laws 1977, c. 643.

(11) State Highway Bond Act of 1995. Session Laws 1995, c. 590. (P.L. 1921, c. 2, s. 39; Ex. Sess. 1921, c. 74; 1923, c. 263, s. 3; 1925, cc. 35, 45, 74, 133; 1927, cc. 41, 95, 176, 183; 1929, cc. 127, 128, 144, 312; 1931, cc. 90, 145; 1935, c. 15, s. 1; 1935, c. 17; S.L. 1943, c. 322; 1949, cc. 1250, 1255; 1965, cc. 46, 913; 1969, c. 379; 1977, c. 643; 1995, c. 590; 1997-456, s. 27.)

Editor's Note. — This section has been numbered and subdivisions redesignated at the direction of the Revisor of Statutes pursuant to S.L. 1997-456, s. 27, which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with General Assembly's computer database.

ARTICLE 9.

Condemnation.

§ 136-103. Institution of action and deposit.

(a) In case condemnation shall become necessary the Department of Transportation shall institute a civil action by filing in the superior court of any county in which the land is located a complaint and a declaration of taking declaring that such land, easement, or interest therein is thereby taken for the use of the Department of Transportation.

(b) Said declaration shall contain or have attached thereto the following:

(1) A statement of the authority under which and the public use for which said land is taken.
(2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.
(3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.
(4) The names and addresses of those persons who the Department of Transportation is informed and believes may have or claim to have an interest in said lands, so far as the same can by reasonable diligence be ascertained and if any such persons are infants, non compos mentis, under any other disability, or their whereabouts or names unknown, it must be so stated.
(5) A statement of the sum of money estimated by said Department of Transportation to be just compensation for said taking.

(c) Said complaint shall contain or have attached thereto the following:

(1) A statement of the authority under which and the public use for which said land is taken.
(2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.
(3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.
(4) The names and addresses of those persons who the Department of Transportation is informed and believes may have or claim to have an interest in said lands, so far as the same can by reasonable diligence be ascertained and if any such persons are infants, non compos mentis, under any other disability, or their whereabouts or names unknown, it must be so stated.
(5) A statement as to such liens or other encumbrances as the Department of Transportation is informed and believes are encumbrances upon said real estate and can by reasonable diligence be ascertained.
(6) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

(d) The filing of said complaint and said declaration of taking shall be accompanied by the deposit of the sum of money estimated by said Department of Transportation to be just compensation for said taking and upon the filing of said complaint and said declaration of taking and deposit of said sum, summons shall be issued and together with a copy of said complaint and said declaration of taking and notice of the deposit be served upon the person named therein in the manner now provided for the service of process in civil actions. The Department of Transportation may amend the complaint and declaration of taking and may increase the amount of its deposit with the court at any time while the proceeding is pending, and the owner shall have the same rights of withdrawal of this additional amount as set forth in G.S. 136-105 of this Chapter. (1959, c. 1025, s. 2; 1961, c. 1084, s. 1; 1963, c. 1156, s. 1; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1997-456, s. 27.)

Editor's Note. — The subsections of this section were numbered pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

CASE NOTES

Use of Income Approach to Establish Value. — The decision in City of Statesville v. Cloaninger, 415 S.E.2d 111, 106 N.C. App. 10 (1992), appears to use the income approach to establishing property value when there are no comparable sales data and the income upon which the opinion of value is based is directly attributable to the land. DOT v. Fleming, 112 N.C. App. 580, 436 S.E.2d 407 (1993).

Applied in DOT v. Bollinger, 121 N.C. App. 606, 468 S.E.2d 796 (1996).

§ 136-108. Determination of issues other than damages.

CASE NOTES

Recording Not Required for Interests in Land Acquired Prior to July 1, 1959. — Section 47-27, which governs deeds for rights-of-way and easements, provides that the Department of Transportation (DOT) does not have to record such interests in land which were acquired prior to July 1, 1959. DOT v. Wolfe, 116 N.C. App. 655, 449 S.E.2d 11 (1994).

Section Does Not Infringe Right to Trial by Jury. —

Where a matter was called for hearing pursuant to this section in a condemnation action with no jury, this hearing did not infringe upon the landowner's right to a jury trial as provided by the North Carolina and United States Constitutions. DOT v. Wolfe, 116 N.C. App. 655, 449 S.E.2d 11 (1994).

Review on Appeal of Arbitrary and Capricious Conduct. — If condemnation proceedings are subject to review due to allegations of arbitrary and capricious conduct or abuse of discretion, and if the court finds safety to be of legitimate concern, the trial judge must make a finding of fact on that issue. Absent such a ruling, an appellate court cannot properly review the trial court's decision as to whether or not Department of Transportation's actions were arbitrary and capricious. DOT v. Overton, 111 N.C. App. 857, 433 S.E.2d 471 (1993), discretionary review improvidently granted, 336 N.C. 598, 444 S.E.2d 448 (1994).

§ 136-109. Appointment of commissioners.

CASE NOTES

Cited in Ferrell v. DOT, 334 N.C. 650, 435 S.E.2d 309 (1993).

§ 136-111. Remedy where no declaration of taking filed; recording memorandum of action.

CASE NOTES

Cited in Adams Outdoor Adv. v. North Carolina DOT, 112 N.C. App. 120, 434 S.E.2d 666 (1993); Southern Furn. Co. of Conover, Inc. v. DOT, 122 N.C. App. 113, 468 S.E.2d 523 (1996); National Adv. Co. v. North Carolina DOT, 124 N.C. App. 620, 478 S.E.2d 248 (1996).

§ 136-112. Measure of damages.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Cited in Ferrell v. DOT, 334 N.C. 650, 435 S.E.2d 309 (1993); Guilford County v. Kane, 114 N.C. App. 243, 441 S.E.2d 556 (1994).

§ 136-121.1. Reimbursement of owner for taxes paid on condemned property.

(a) A property owner whose property is totally taken in fee simple by any condemning agency (as defined in G.S. 133-7(1)) exercising the power of eminent domain, under this Chapter or any other statute or charter provision, shall be entitled to reimbursement from the condemning agency of the pro rata portion of real property taxes paid that are allocable to a period subsequent to vesting of title in the agency, or the effective date of possession of the real property, whichever is earlier.

(b) An owner who meets the following conditions is entitled to reimbursement from the condemning agency for all deferred taxes paid by the owner pursuant to G.S. 105-277.4(c) as a result of the condemnation:

(1) The owner is a natural person whose property is taken in fee simple by a condemning agency exercising the power of eminent domain under this Chapter or any other statute.

(2) The owner also owns agricultural land, horticultural land, or forestland that is contiguous to the condemned property and that is in active production.

A potential condemning agency that seeks to acquire property by gift or purchase shall give the owner written notice of the provisions of this section. The definitions in G.S. 105-277.2 apply in this subsection. (1975, c. 439, s. 1; 1997-270, s. 2.)

Effect of Amendments. — The 1997 amendment, effective July 3, 1997, and applicable to transfers made on or after August 1, 1997, designated the existing provisions as subsection (a), substituted "that" for "which" and "the" for "such" in subsection (a); and added subsection (b).

Article 10.

Preservation, etc., of Scenic Beauty of Areas along Highways.

§ 136-125. Regulation of scenic easements.

Editor's Note. — Session Laws 1993, c. 539, s. 997, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 11.

Outdoor Advertising Control Act.

§ 136-126. Title of Article.

CASE NOTES

Cited in Whiteco Indus., Inc. v. Harrelson, 111 N.C. App. 815, 434 S.E.2d 229 (1993); Whiteco Indus., Inc. v. Harrington, 111 N.C. App. 839, 434 S.E.2d 234 (1993).

§ 136-128. Definitions.

As used in this Article:

(1) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(1a) "Illegal sign" means one which was erected and/or maintained in violation of State law.

(1b) "Information center" means an area or site established and maintained at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as the Department of Transportation may consider desirable.

(2) "Interstate system" means that portion of the National System of Interstate and Defense Highways located within the State, as officially designated, or as may hereafter be so designated, by the Department of Transportation, or other appropriate authorities and are also so designated by interstate numbers. As to highways under construction so designated as interstate highways pursuant to the above procedures, the highway shall be a part of the interstate system for the purposes of this Article on the date the location of the highway has been approved finally by the appropriate federal authorities.

(2a) "Nonconforming sign" shall mean a sign which was lawfully erected but which does not comply with the provisions of State law or State rules and regulations passed at a later date or which later fails to comply with State law or State rules or regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.

(3) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or any other thing which is designed, intended or used to advertise or inform, any part of the advertising or information contents of which is visible from any place on the main-traveled way of the interstate or primary system, whether the same be permanent or portable installation.

(4) "Primary systems" means that portion of connected main highways, as now officially designated, or as may hereafter be so designated by the Department of Transportation as primary system, or other appropriate authorities and are also so designated by N.C. or U.S. numbers. As to highways

under construction so designated as primary highways pursuant to the above procedures, the highway shall be a part of the primary system for purposes of this Article on the date the location of the highway has been approved finally by the appropriate federal or State authorities.

(5) "Safety rest area" means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control, for the convenience of the traveling public.

(6) "State law" means a State constitutional provision or statute, or an ordinance, rule or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to a State Constitution or statute.

(7) "Unzoned area" shall mean an area where there is no zoning in effect.

(8) "Urban area" shall mean an area within the boundaries or limits of any incorporated municipality having a population of five thousand or more as determined by the latest available federal census.

(9) "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity. (1967, c. 1248, s. 3; 1973, c. 507, s. 5; 1975, c. 568, ss. 1-4; 1977, c. 464, s. 7.1; 1997-456, s. 27.)

Editor's Note. — Subdivisions (0.1), (0.2), and (1) of this section were renumbered as subdivisions (1), (1a), and (1b), respectively, pursuant to S.L. 1997-456, s. 27 which authorized the Revisor Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 136-129. Limitations of outdoor advertising devices.

Local Modification. — Buncombe and Surry Counties: 1993 (Reg. Sess., 1994), c. 559, ss. 1, 2.

CASE NOTES

Advertising in Industrial or Commercial Zones. — Outdoor advertising in conformity with the rules and regulations promulgated by North Carolina Department of Transportation is permitted in areas which are zoned industrial or commercial under authority of State law. Naegele Outdoor Adv., Inc. v. Hunt, 121 N.C. App. 205, 465 S.E.2d 549 (1996).

Having zoned property as a highway commercial zone under authority of State law and in accordance with a comprehensive plan, the trial court properly concluded that the Secretary's revocation of the permits exceeded his authority under the statutory mandate of subsection (4) which expressly allows advertising in areas which are zoned industrial or commercial under authority of State law. Naegele Outdoor Adv., Inc. v. Hunt, 121 N.C. App. 205, 465 S.E.2d 549 (1996).

§ 136-130. Regulation of advertising.

CASE NOTES

Revocation Permitted. — The Department of Transportation had the authority to revoke petitioner's permit where petitioner erected nonconforming outdoor advertising in noncommercial/nonindustrial area. Outdoor E. v. Harrelson, 123 N.C. App. 685, 476 S.E.2d 136 (1996).

§ 136-131. Removal of existing nonconforming advertising.

CASE NOTES

Legislative Intent. — If the General Assembly had intended to require payment of compensation whenever the Department of Transportation (DOT) removes a sign under the Outdoor Advertising Control Act (OACA), it could have used the term "required" rather than "authorized" in this section. National Adv. Co. v. North Carolina DOT, 124 N.C. App. 620, 478 S.E.2d 248 (1996).

§ 136-131.1. (Expires June 30, 1998 — See editor's note) Just compensation required for the removal of billboards on federal-aid primary highways by local authorities.

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 725, s. 1, amended Session Laws 1981, c. 1147, s. 2, as amended by Session Laws 1983, c. 318, by Session Laws 1987, c. 1024, and by Session Laws 1989, c. 166, s. 1, to change the expiration date of this section from June 30, 1994, to June 30, 1998. This amendment became effective July 11, 1994, after the June 30, 1994 expiration date.

CASE NOTES

Cited in Capital Outdoor Adv., Inc. v. City of Raleigh, 337 N.C. 150, 446 S.E.2d 289, rehearing denied, 337 N.C. 807, 449 S.E.2d 566 (1994).

§ 136-133. Permits required.

CASE NOTES

Revocation Permitted. — The Department of Transportation had the authority to revoke petitioner's permit where petitioner erected nonconforming outdoor advertising in noncommercial/nonindustrial area. Outdoor E. v. Harrelson, 123 N.C. App. 685, 476 S.E.2d 136 (1996).

§ 136-134.1. Judicial review.

CASE NOTES

Superior Court Jurisdiction. — When permit holder petitioned the superior court for review of Department of Transportation revocation of permit for highway sign, this gave the superior court jurisdiction to determine the whole case including the taxing of costs including section providing for attorney's fees to be taxed as costs in some instances. Able Outdoor, Inc. v. Harrelson, 341 N.C. 167, 459 S.E.2d 626 (1995).

§ 136-135. Enforcement provisions.

Editor's Note. — Session Laws 1993, c. 539, s. 998, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-140.1. Adopt-A-Highway.

(a) Notwithstanding any other provision of this Article, the Department of Transportation may permit individuals or groups participating in its Adopt-A-Highway Program access to controlled access facilities for the purpose of removing litter from the right-of-way. Acknowledgment of participation in the program may be indicated by appropriate signs that shall be owned, controlled, and erected by the Department of Transportation. The size, style, specifications, and content of the signs shall be determined in the sole discretion of the Department of Transportation. The Department of Transportation may issue rules and policies necessary to administer the program.

(b) Adopt-A-Highway participants may use contract services to clean the roadside of the sections of highway the participants have adopted only in accordance with the rules and policies issued by the Department of Transportation. (1995, c. 324, s. 18.1.)

Editor's Note. — Session Laws 1995, c. 324, s. 28.5, made this section effective July 1, 1995.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

ARTICLE 12.

Junkyard Control Act.

§ 136-144. Restrictions as to location of junkyards.

CASE NOTES

Cited in Naegele Outdoor Adv., Inc. v. Harrelson, 112 N.C. App. 98, 434 S.E.2d 244 (1993).

§ 136-145. Enforcement provisions.

Editor's Note. — Session Laws 1993, c. 539, s. 999, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-147. Screening of junkyards lawfully in existence.

CASE NOTES

Cited in Naegele Outdoor Adv., Inc. v. Harrelson, 112 N.C. App. 98, 434 S.E.2d 244 (1993).

Article 14.

North Carolina Highway Trust Fund.

§ 136-175. (For contingent repeal see note) Definitions.

Editor's Note. — Session Laws 1989, c. 692, s. 8.4, as amended by Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 7, provides that when contracts for all projects specified in Article 14 of Chapter 136 have been let and sufficient revenue has been accumulated to pay the contracts, which contingency is not expected to occur until some years after the date of enactment, the Secretary of Transportation shall certify this occurrence by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State. Contingent upon certification of a favorable vote on the bonds in the State Highway Bond Act of 1996, the proceeds of bonds and notes issued pursuant to the State Highway Bond Act of 1996 shall not be included as revenues accumulated to pay the contracts for the projects specified in this Article. This Article shall be repealed effective on the first day of the calendar quarter following the date the Secretary sends the letter, unless there is less than 30 days between that date and the first day of the following quarter, in which case, the repeal will become effective on the first day of the second calendar quarter following the date the letter is sent, except that, contingent upon the certification of a favorable vote on the bonds in the State Highway Bond Act of 1996, the repeal will not become effective until the State Treasurer certifies by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State that all of the bonds and notes issues pursuant to the State Highway Bond Act of 1996 have been retired or provision for their retirement has been made. A favorable vote on the bonds in the State Highway Bond Act of 1996 was certified November 26, 1996.

§ 136-176. (For contingent repeal see editor's note) Creation, revenue sources, and purpose of North Carolina Highway Trust Fund.

(a) A special account, designated the North Carolina Highway Trust Fund, is created within the State treasury. The Trust Fund consists of the following revenue:

(1) Motor fuel, alternative fuel, and road tax revenue deposited in the Fund under G.S. 105-449.125, 105-449.134, and 105-449.43, respectively.

(2) Motor vehicle use tax deposited in the Fund under G.S. 105-187.9.

(3) Revenue from the certificate of title fee and other fees payable under G.S. 20-85.

(4) Revenue available from the retirement of refunding bonds issued to repay highway construction bonds and deposited in the Fund under G.S. 136-183.

(5) Interest and income earned by the Fund.

(b) Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed four and one-half percent (4.5%) of the amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section, may be used each fiscal year by the Department for expenses to administer the Trust Fund. The rest of the funds in the Trust Fund shall be allocated and used as follows:

(1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design, and construct the projects of the Intrastate System described in G.S. 136-179.

(2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. 136-180.

(3) Six and one-half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.

(4) Six and one-half percent (6.5%) for secondary road construction as provided in G.S. 136-182.

(b) **(For contingent amendment, see editor's note)** Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed four and one-half percent (4.5%) of the amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section, may be used each fiscal year by the Department for expenses to administer the Trust Fund. The rest of the funds in the Trust Fund shall be allocated and used as follows:

(1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design, and construct the projects of the Intrastate System described in G.S. 136-179 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these projects.

(2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. 136-80 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these urban loops.

(3) Six and one-half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.

(4) Six and one-half percent (6.5%) for secondary road construction as provided in G.S. 136-182 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to secondary road construction.

The Department must administer funds allocated under subdivisions (1), (2), and (4) of this subsection in a manner that ensures that sufficient funds are available to make the debt service payments on bonds issued under the State Highway Bond Act of 1996 as they become due.

(c) If funds are received under 23 U.S.C. Chapter 1, Federal-Aid Highways, for a project for which funds in the Trust Fund may be used, the amount of federal funds received plus the amount of any funds from the Highway Fund that were used to match the federal funds may be transferred by the Secretary of Transportation from the Trust Fund to the Highway Fund and used for projects in the Transportation Improvement Program.

(d) A contract may be let for projects funded from the Trust Fund in anticipation of revenues pursuant to the cash-flow provisions of G.S. 143-28.1 only for the two bienniums following the year in which the contract is let. (1989, c. 692, s. 1.1; c. 770, ss. 68.2, 74.6; 1989 (Reg. Sess., 1990), c. 1024, s. 46(a), (b); 1991, c. 193, s. 9; c. 280, s. 1; c. 689, s. 62; 1995, c. 390, s. 27; 1995 (Reg. Sess., 1996), c. 590, s. 6; 1996, 2nd Ex. Sess., c. 18, s. 19.4(a).)

Editor's Note. —
For contingent repeal, see editor's note under § 136-175.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 17, provides that c. 590, s. 6 shall become effective upon the certification of a favorable vote on the bonds by the State Board of Elections to the Secretary of State as provided in Section 9 of that act. A favorable vote on the bonds in the State Highway Bond Act of 1996 was certified November 26, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 1, provides that this act shall be known and may be cited as the State Highway Bond Act of 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 13(d), is a severability clause.

Session Laws 1995 (Reg. Sess., 1996), c. 590, the State Highway Bond Act of 1996, provides that the purpose of the act is to provide for the issuance of general obligation bonds of the State for the purpose of providing funds for constructing, improving, and relocating roads, bridges, tunnels, and other highway facilities; provides for authorization of bonds and notes and appropriation, use, and allocation of their proceeds; provides that the question of the issuance of these bonds shall be submitted to the voters of the State at the general election in November of 1996; and if approved, provides for the issuance, repayment, investment, and other properties of the bond.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — Session Laws 1996, Second Extra Session, c. 18, s. 19.4(a), effective July 1, 1996, substituted "two bienniums" for "biennium" in subsection (d).

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 6, contingent upon certification of a favorable vote on the bonds by the State Board of Elections to the Secretary of State, as provided in that act, would add "and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these projects" at the end of subdivision (b)(1); would add "and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these urban loops" at the end of subdivision (b)(2); would add "and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to secondary road construction" at the end of subdivision (b)(4); and would add the last sentence of subsection (b). See Editor's Note for contingent effective date.

§ 136-177.1. (For contingent effective date, see editor's note) Requirement to use federal funds for Intrastate System projects and urban loops.

For fiscal years 1996-97 through 2010-11, the Department of Transportation must use ten million dollars ($10,000,000) of the funds it receives each year under 23 U.S.C. Chapter 1, Federal-Aid Highways, to construct the Intrastate System projects described in

G.S. 136-179. For fiscal years 1996-97 through 2011-12, the Department of Transportation must use ten million dollars ($10,000,000) of the funds it receives each year under 23 U.S.C. Chapter 1, Federal-Aid Highways, to construct the urban loops described in G.S. 136-180. G.S. 136-176(c) does not apply to federal funds required to be used under this section for Intrastate System projects or urban loops, nor does it apply to any funds from the Highway Fund that were used to match these federal funds. (1995 (Reg. Sess., 1996), c. 590, s. 15.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 17, provides that c. 590, s. 15, which enacted this section, shall become effective upon the certification of a favorable vote on the bonds by the State Board of Elections to the Secretary of State as provided in Section 9 of that act. A favorable vote on the bonds in the State Highway Bond Act of 1996 was certified November 26, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 590, the State Highway Bond Act of 1996, provides that the purpose of the act is to provide for the issuance of general obligation bonds of the State for the purpose of providing funds for constructing, improving, and relocating roads, bridges, tunnels, and other highway facilities; provides for authorization of bonds and notes and appropriation, use, and allocation of their proceeds; provides that the question of the issuance of these bonds shall be submitted to the voters of the State at the general election in November of 1996; and if approved, provides for the issuance, repayment, investment, and other properties of the bond.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 13(d), is a severability clause.

§ 136-180.1. Proposed Durham Northern loop.

The Department of Transportation shall notify the owners of all property that is within a corridor located in Durham County and is being considered as a possible alignment of the proposed Durham Northern loop of at least one informational workshop, if one is held, and any public hearings on that urban loop. These notifications shall be made by first-class mail and shall be made no less than 30 days prior to the scheduled workshop or public hearing. Prior to a decision on the proposed Durham Northern loop, the Department of Transportation shall consider all alternatives advanced by interested parties including improvements to existing corridors and consider neighborhood growth, economic development patterns and trends, the best protection for the environment, and limitation on encroachment upon State parks. A public report shall be made by the Department of Transportation of its findings and the basis for its decision. (1995 (Reg. Sess., 1996), c. 590, s. 14.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 17 provides that this section is effective upon ratification. The Act was ratified June 20, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 1, provides that this act shall be known and may be cited as the State Highway Bond Act of 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 590, the State Highway Bond Act of 1996, provides that the purpose of the act is to provide for the issuance of general obligation bonds of the State for the purpose of providing funds for constructing, improving, and relocating roads, bridges, tunnels, and other highway facilities; provides for authorization of bonds and notes and appropriation, use, and allocation of their proceeds; provides that the question of the issuance of these bonds shall be submitted to the voters of the State at the general election in November of 1996; and if approved, provides for the issuance, repayment, investment, and other properties of the bond.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 13(d), is a severability clause.

§ 136-185. (For contingent effective date, see editor's note) Maintenance reserve created in certain circumstances.

If the Highway Trust Fund has not terminated but all contracts for the projects of the Intrastate System described in G.S. 136-179 have been let and the amount collected and allocated for the Intrastate System is enough to pay the contracts and retire any bonds issued under the State Highway Bond Act of 1996 for projects of the Intrastate System, all subsequent allocations of revenue for the Intrastate System shall be credited to a reserve account within the Trust Fund. Revenue in this reserve may be used only to maintain the projects of the Intrastate System.

If the Highway Trust Fund has not terminated but all contracts for the urban loops described in G.S. 136-180 have been let and the amount collected and allocated for the urban loops is enough to pay the contracts and retire any bonds issued under the State Highway Bond Act of 1996 for the urban loops, then all subsequent allocations of revenue for the urban loops shall be credited to a reserve account within the Trust Fund. Revenue in this reserve may be used only to maintain the urban loops. (1995 (Reg. Sess., 1996), c. 590, s. 16.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 17, provides that c. 590, s. 16, which enacted this section, shall become effective upon the certification of a favorable vote on the bonds by the State Board of Elections to the Secretary of State as provided in Section 9 of that act. A favorable vote on the bonds in the State Highway Bond Act of 1996 was certified November 26, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 1, provides that this act shall be known and may be cited as the State Highway Bond Act of 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 590, the State Highway Bond Act of 1996, provides that the purpose of the act is to provide for the issuance of general obligation bonds of the State for the purpose of providing funds for constructing, improving, and relocating roads, bridges, tunnels, and other highway facilities; provides for authorization of bonds and notes and appropriation, use, and allocation of their proceeds; provides that the question of the issuance of these bonds shall be submitted to the voters of the State at the general election in November of 1996; and if approved, provides for the issuance, repayment, investment, and other properties of the bond.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 13(d), is a severability clause.

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

December 1, 1997

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1997 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by Michie under the supervision of the Department of Justice of the State of North Carolina.

Michael F. Easley
Attorney General of North Carolina

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Michael F. Easley

Attorney General of North Carolina